



City Council Chambers
3300 Capitol Avenue
Fremont, California

City Council

Bob Wasserman, Mayor
Anu Natarajan, Vice Mayor
Bob Wieckowski
Bill Harrison
Suzanne Lee Chan

City Staff

Fred Diaz, City Manager
Harvey E. Levine, City Attorney
Melissa Stevenson Dile, Deputy City Manager

Dawn G. Abrahamson, City Clerk
Harriet Commons, Finance Director
Marilyn Crane, Information Technology Svcs. Dir.
Daren Fields, Economic Dev. Director
Annabell Holland, Parks & Recreation Dir.
Norm Hughes, City Engineer
Jill Keimach, Community Dev. Director
Bruce Martin, Fire Chief
Jim Pierson, Transportation & Ops Director
Michael Rich, Human Resources Director
Jeff Schwob, Planning Director
Suzanne Shenfil, Human Services Director
Craig Steckler, Chief of Police
Elisa Tierney, Redevelopment Director

City Council Agenda and Report [Redevelopment Agency of Fremont]

General Order of Business

1. Preliminary
 - Call to Order
 - Salute to the Flag
 - Roll Call
2. Consent Calendar
3. Ceremonial Items
4. Public Communications
5. Scheduled Items
 - Public Hearings
 - Appeals
 - Reports from Commissions, Boards and Committees
6. Report from City Attorney
7. Other Business
8. Council Communications
9. Adjournment

Order of Discussion

Generally, the order of discussion after introduction of an item by the Mayor will include comments and information by staff followed by City Council questions and inquiries. The applicant, or their authorized representative, or interested citizens, may then speak on the item; each speaker may only speak once to each item. At the close of public discussion, the item will be considered by the City Council and action taken. Items on the agenda may be moved from the order listed.

Consent Calendar

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address the City Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.



Addressing the Council

Any person may speak once on any item under discussion by the City Council after receiving recognition by the Mayor. Speaker cards will be available prior to and during the meeting. To address City Council, a card must be submitted to the City Clerk indicating name, address and the number of the item upon which a person wishes to speak. When addressing the City Council, please walk to the lectern located in front of the City Council. State your name. In order to ensure all persons have the opportunity to speak, a time limit will be set by the Mayor for each speaker (see instructions on speaker card). In the interest of time, each speaker may only speak once on each individual agenda item; please limit your comments to new material; do not repeat what a prior speaker has said.

Oral Communications

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under the Oral Communications section of Public Communications. Please submit your speaker card to the City Clerk prior to the commencement of Oral Communications. **Only those who have submitted cards prior to the beginning of Oral Communications will be permitted to speak.** Please be aware the California Government Code prohibits the City Council from taking any immediate action on an item which does not appear on the agenda, unless the item meets stringent statutory requirements. The Mayor will limit the length of your presentation (see instructions on speaker card) and each speaker may only speak once on each agenda item.

To leave a voice message for all Councilmembers and the Mayor simultaneously, dial 284-4080.

The City Council Agendas may be accessed by computer at the following Worldwide Web Address: www.fremont.gov

Information

Copies of the Agenda and Report are available in the lobbies of the Fremont City Hall, 3300 Capitol Avenue and the Development Services Center, 39550 Liberty Street, on Friday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available at the Office of the City Clerk.

The regular meetings of the Fremont City Council are broadcast on Cable Television Channel 27 and can be seen via webcast on our website (www.Fremont.gov).

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the City Clerk at (510) 284-4060. Council meetings are *open captioned* for the deaf in the Council Chambers and *closed captioned* for home viewing.

Availability of Public Records

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the City Council less than 72 hours prior to the meeting will be available for public inspection in specifically labeled binders located in the lobby of Fremont City Hall, 3300 Capitol Avenue during normal business hours, at the time the records are distributed to the City Council.

Information about the City or items scheduled on the Agenda and Report may be referred to:

Address: City Clerk
City of Fremont
3300 Capitol Avenue, Bldg. A
Fremont, California 94538
Telephone: (510) 284-4060

Your interest in the conduct of your City's business is appreciated.

**NOTICE AND AGENDA OF SPECIAL MEETING
CLOSED SESSION**

DATE: Tuesday, June 2, 2009

TIME: 5:30 p.m.

LOCATION: Fremont Room, 3300 Capitol Avenue, Fremont

The City will convene a special meeting. It is anticipated the City will immediately adjourn the meeting to a closed session for granting authority to its real property negotiators, as follows:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS: This Closed Session is authorized by Government Code Section 54956.8 at the time and place stated above to confer with and grant authority to its real property negotiators regarding price and terms:

APN#501-1130-007-01, located at 39102 State Street.

APN#501-1130-007-01, located at 39160 State Street.

The Brown Act requires the negotiators (even when not attending the meeting) to be listed in this notice. Those negotiators are:

For the City – (which will be represented at the meeting); Daren Fields, Economic Development Director and Harvey Levine, City Attorney.

This Special Meeting is being called by Mayor Wasserman.

AGENDA
FREMONT CITY COUNCIL SPECIAL MEETING AND REGULAR MEETING
JUNE 2, 2009
COUNCIL CHAMBERS, 3300 CAPITOL AVE., BUILDING A
6:00 P.M. SPECIAL MEETING
7:00 P.M. REGULAR MEETING

1. PRELIMINARY

- 1.1 Call to Order
- 1.2 Salute the Flag
- 1.3 Roll Call

2. SPECIAL MEETING - 6:00 P.M.

- 2.1 EAST-WEST CONNECTOR (ROUTE 84 OPTION 2) PROJECT -
CONSIDERATION OF FINAL EIR AND PROJECT APPROVAL
Consideration of Final Environmental Impact Report, Adoption of Findings,
Statement of Overriding Considerations, and Project Approval for the East-West
Connector (Route 84 Option 2) Project

Contact Person:

| | | |
|---------|-----------------------|-------------------------------|
| Name: | Kelly Diekmann | Jim Pierson |
| Title: | Senior Planner | Director |
| Dept.: | Community Development | Transportation and Operations |
| Phone: | 510-494-4540 | 510-494-4722 |
| E-Mail: | kdiekmann@fremont.gov | jpierson@fremont.gov |

RECOMMENDATION: Therefore the staff recommends that Council:

- 1. Consider the environmental effects of the project as shown in the EIR,
- 2. Certify the EIR as complete and adequate,
- 3. Approve the project on the condition that the mitigation measures as described by the Final EIR are in fact included with the project approval in an adopted Mitigation Monitoring and Reporting Plan, and
- 4. Direct staff to prepare the Findings and Statement of Overriding Considerations to be returned to Council at its July 7 meeting.

3. REGULAR MEETING - 7:00 P.M.

- 3.1 Announcements by Mayor / City Manager

4. CONSENT CALENDAR

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.

4.1 Motion to Waive Further Reading of Proposed Ordinances
(This permits reading the title only in lieu of reciting the entire text.)

4.2 Approval of Minutes – None.

4.3 FY 2009/10 PARATRANSIT WORKPLAN
Adopt a Resolution Authorizing Submittal of a Workplan for the FY 2009/10 Measure B Paratransit Program to the Alameda County Transportation Improvement Authority (ACTIA)

Contact Person:

| | | |
|----------------|------------------------------------|------------------------------|
| Name: | <i>Shawn Fong</i> | <i>Suzanne Shenfil</i> |
| Title: | <i>Paratransit Program Manager</i> | <i>Director</i> |
| Dept.: | <i>Human Services</i> | <i>Human Services</i> |
| Phone: | <i>510-574-2033</i> | <i>510-574-2051</i> |
| E-Mail: | <i>sfong@fremont.gov</i> | <i>sshensfil@fremont.gov</i> |

RECOMMENDATIONS:

- 1. Adopt a resolution authorizing submittal of the City's application to ACTIA for paratransit funding under Measure B.*
- 2. Authorize the City Manager or his designee to notify ACTIA that the City is allocating all Measure B paratransit revenues to the City's non-mandated paratransit program.*

4.4 PARATRANSIT CONTRACT FOR FY 2009-2011
Authorize the City Manager to Execute a Contract with MV Transportation for Delivery of Non-ADA Paratransit Services

Contact Person:

| | | |
|----------------|------------------------------------|------------------------------|
| Name: | <i>Shawn Fong</i> | <i>Suzanne Shenfil</i> |
| Title: | <i>Paratransit Program Manager</i> | <i>Director</i> |
| Dept.: | <i>Human Services</i> | <i>Human Services</i> |
| Phone: | <i>510-574-2033</i> | <i>510-574-2051</i> |
| E-Mail: | <i>sfong@fremont.gov</i> | <i>sshensfil@fremont.gov</i> |

RECOMMENDATION: *Authorize the City Manager or his designee to execute a contract with MV Transportation for the provision of the City of Fremont's Measure B-funded paratransit service from July 1, 2009 through June 30, 2011, for up to*

\$385,000 for each fiscal year, with two additional one-year options as described in the staff report contingent on satisfactory performance and, for each year after FY 2009/10, the availability of funds.

4.5 KATO ROAD IRREVOCABLE OFFER OF DEDICATION - PARCEL MAP 7206
Adopt a Resolution Accepting an Irrevocable Offer of Dedication on Kato Road for Streets and Highway Purpose as Described on Parcel Map 7206

Contact Person:

| | | |
|----------------|------------------------------|------------------------------|
| <i>Name:</i> | <i>Randy Sabado</i> | <i>Norm Hughes</i> |
| <i>Title:</i> | <i>Real Property Manager</i> | <i>City Engineer</i> |
| <i>Dept.:</i> | <i>Community Development</i> | <i>Community Development</i> |
| <i>Phone:</i> | <i>510-494-4715</i> | <i>510-494-4748</i> |
| <i>E-Mail:</i> | <i>rsabado@fremont.gov</i> | <i>nhughes@fremont.gov</i> |

RECOMMENDATION: Adopt a Resolution Accepting the Irrevocable Offer of Dedication as shown on Parcel Map 7206.

4.6 AWARD CONSTRUCTION CONTRACT FOR THE NILES TOWN PLAZA SITE IMPROVEMENTS (PWC8614E)
Approve Plans and Specifications and Award a Construction Contract for the Niles Town Plaza Site Improvements, City Project No. PWC 8614E

Contact Person:

| | | |
|----------------|--------------------------------------|---|
| <i>Name:</i> | <i>Josh Huber</i> | <i>Robert Kalkbrenner</i> |
| <i>Title:</i> | <i>Redevelopment Project Manager</i> | <i>Civic Facilities Development Manager</i> |
| <i>Dept.:</i> | <i>OHR</i> | <i>Community Development</i> |
| <i>Phone:</i> | <i>510-494-4513</i> | <i>510-494-4428</i> |
| <i>E-Mail:</i> | <i>jhuber@fremont.gov</i> | <i>kalkbrenner@fremont.gov</i> |

RECOMMENDATIONS:

- 1. Approve the plans and specifications for the Niles Town Plaza Site Improvements (City Project No. PWC 8614E).*
- 2. Award the contract for the construction of the Niles Town Plaza Site Improvements to Star Construction, Inc., for the base bid amount of \$1,573,534.83, plus Alternate #2 for \$28,237.00, for a total contract amount of \$1,601,771.83, and authorize the City Manager or his designee to execute the contract.*

4.7 REJECTION OF BID – SECURITY SYSTEM MAINTENANCE CENTER
Rejection of Bids for Security System Renovations at the Maintenance Center, City Project No. PWC 8376

Contact Person:

| | | |
|---------------|------------------------------|--------------------|
| <i>Name:</i> | <i>Ronnie Fong, P.E.</i> | <i>Jim Pierson</i> |
| <i>Title:</i> | <i>Senior Civil Engineer</i> | <i>Director</i> |

| | | |
|---------|-----------------------|-------------------------------|
| Dept.: | Community Development | Transportation and Operations |
| Phone: | 510-494-4778 | 510-494-4722 |
| E-Mail: | rfong@fremont.gov | jpierson@fremont.gov |

RECOMMENDATION: Reject all bids received on May 5, 2009 as excessive, and authorize staff to implement more cost effective measures at the maintenance center after security renovations at the Police Facility and the Main Library are completed.

4.8 **AMENDMENT TO THE CITY OF FREMONT MASTER FEE RESOLUTION TO UPDATE CERTAIN RECREATION SERVICES DIVISION FACILITY USE AND SERVICE FEES**

Continuation of Public Hearing (Published Notice) Amendment to the City of Fremont Master Fee Resolution to Update Certain Recreation Services Division Facility Use and Service Fees

Contact Person:

| | | |
|---------|------------------------------|----------------------|
| Name: | Kelly King | Annabell Holland |
| Title: | Recreation Superintendent II | Director |
| Dept.: | Parks and Recreation | Parks and Recreation |
| Phone: | 510-494-4327 | 510-494-4329 |
| E-Mail: | kking@fremont.gov | aholland@fremont.gov |

RECOMMENDATION: Continue to June 9, 2009.

5. **CEREMONIAL ITEMS – None.**

6. **PUBLIC COMMUNICATIONS**

6.1 Oral and Written Communications

REDEVELOPMENT AGENCY – The Redevelopment Agency Board will convene at this time and take action on the agenda items listed on the Redevelopment Agency Agenda. See separate agenda (yellow paper).

PUBLIC FINANCING AUTHORITY – None.

CONSIDERATION OF ITEMS REMOVED FROM CONSENT CALENDAR

7. SCHEDULED ITEMS

7.1 PUBLIC HEARING ON THE FY 2009/10 OPERATING BUDGET

First Public Hearing and Council Direction to Staff on the Proposed Fiscal Year 2009/10 Operating Budget

Contact Person:

| | | |
|---------|------------------------|----------------------|
| Name: | Catherine Chevalier | Harriet Commons |
| Title: | Budget Manager | Director |
| Dept.: | Finance | Finance |
| Phone: | 510-494-4615 | 510-284-4010 |
| E-Mail: | cchevalier@fremont.gov | hcommons@fremont.gov |

RECOMMENDATIONS:

1. Hold a public hearing.
2. Provide direction as needed on issues pertaining to the FY 2009/10 proposed operating budget.

7.2 PUBLIC HEARING ON FY 2009/10 - 2013/14 CIP

First Public Hearing and Council Direction to Staff on the proposed FY 2009/10 - 2013/14 Capital Improvement Program (CIP)

Contact Person:

| | | |
|---------|-----------------------|-----------------------|
| Name: | Sean O'Shea | Norm Hughes |
| Title: | Management Analyst II | City Engineer |
| Dept.: | Community Development | Community Development |
| Phone: | 510-494-4777 | 510-494-4748 |
| E-Mail: | soshea@fremont.gov | nhughes@fremont.gov |

RECOMMENDATIONS:

1. Hold a public hearing.
2. Receive and consider all capital improvement projects proposed for the Five-Year FY2009/10-2013/14 CIP.
3. Provide direction as needed on the FY2009/10-2013/14 proposed CIP, for consideration on June 9, 2009.

7.3 APPEAL FROM APPROVAL OF FARWELL MEDICAL OFFICE BUILDING—FARWELL DRIVE—PLN2009-00123

Public Hearing (Published Notice) to Consider a Third-Party Appeal from Planning Commission Approval of a Planned District Minor Amendment for Site Plan and Architectural Review, a Planned Unit Development Rescission, and a Finding for Floor Area Ratio Increase for a New Two-Story 32,600 Square Foot Medical Office Building on a Currently Vacant and Unaddressed Parcel

Contact Person:

| | | |
|--------|-------------|-------------------|
| Name: | Joel Pullen | Jeff Schwob |
| Title: | Planner II | Planning Director |

Dept.: Community Development
Phone: 510-494-4436
E-Mail: jpullen@fremont.gov

Community Development
510-494-4527
jschwob@fremont.gov

RECOMMENDATIONS:

1. Hold public hearing.
2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) under 15332 of the CEQA Guidelines, infill exemption.
3. Find that construction of a 32,600 square-foot medical office building and associated site development as shown on Exhibit "A" for PLN2009-00123 is in conformance with relevant provisions contained in the General Plan. These provisions include the designations, goals, and policies set forth in the General Plan's Land Use Chapter as enumerated in the staff report.
4. Deny the third-party appeal (uphold Planning Commission's April 9, 2009 approval) of the Rescission of Planned Unit Development PUD-72-5.
5. Deny the third-party appeal (uphold Planning Commission's April 9, 2009 approval) of the Planned District Minor Amendment, Finding for Floor Area Ratio Increase, and Site Plan and Architecture PLN2009-00123, as shown on Exhibit "A", subject to findings and conditions in Exhibit "B".

8. REPORT FROM CITY ATTORNEY

8.1 Report Out from Closed Session of Any Final Action

9. OTHER BUSINESS – None.

10. COUNCIL COMMUNICATIONS

10.1 Council Referrals – None.

10.2 Oral Reports on Meetings and Events

11. ADJOURNMENT



**REPORT SECTION
FREMONT CITY COUNCIL
SPECIAL MEETING AND
REGULAR MEETING**

JUNE 2, 2009

2.1 EAST-WEST CONNECTOR (ROUTE 84 OPTION 2) PROJECT - CONSIDERATION OF FINAL EIR AND PROJECT APPROVAL

Consideration of Final Environmental Impact Report, Adoption of Findings, Statement of Overriding Considerations, and Project Approval for the East-West Connector (Route 84 Option 2) Project

Contact Person:

| | | |
|---------|-----------------------|-------------------------------|
| Name: | Kelly Diekmann | Jim Pierson |
| Title: | Senior Planner | Director |
| Dept.: | Community Development | Transportation and Operations |
| Phone: | 510-494-4540 | 510-494-4722 |
| E-Mail: | kdiekmann@fremont.gov | jpierson@fremont.gov |

Executive Summary: In 2006 the Memorandum of Understanding between Fremont, Union City, ACTA and Caltrans was approved in which Fremont agreed to fairly and openly consider the environmental review and project development of Option 2; to support efforts to ensure that the environmental impact studies were conducted fairly and equitably, without bias for or against Fremont or Union City; and to formally consider the construction of Option 2 contingent upon review and acceptance of the environmental documents and mitigations.

The Alameda County Transportation Authority (ACTA) as a Lead Agency has prepared a Final Environmental Impact Report (EIR) for the East-West Connector (Route 84 Option 2) Project to evaluate the potential environmental impacts of implementing the project and mitigation measures. Staff has reviewed the Final EIR and ACTA's responses to the City's comments. Staff has concluded that ACTA prepared the EIR in compliance with the requirements of the Project Memorandum of Understanding (MOU) between ACTA, Caltrans, Union City and Fremont that was approved by the Council in 2006. Further, staff believes ACTA's responses to the City's comments on the Draft EIR are acceptable and concluded the Final EIR has been completed in compliance with the California Environmental Quality Act (CEQA) and CEQA Guidelines.

As a participant in the overall project, the City is a Responsible Agency as defined by CEQA. Accordingly, the City must consider the environmental document, determine if it is complete and adequate, prepare written findings of fact (Findings) for each significant environmental impact and each alternative identified in the EIR in accordance with the CEQA Guidelines to support a decision on a project. Further, because there are significant environmental effects that cannot be mitigated, if the project is to move forward, the Council must adopt a Statement of Overriding Considerations if the Council determines that the benefits of the Project outweigh the unavoidable impacts based on the Findings.

With regard to the East-West Connector (EWC) Project itself, based on staff review of the engineering and environmental studies, the ability to mitigate the vast majority of the environmental impacts of the Project, and the transportation benefits to the City, staff would recommend the Council approve the EWC Project.

Therefore the staff recommends that Council (1) consider the environmental effects of the project as shown in the EIR, (2) certify the EIR as complete and adequate, (3) approve the project on the condition that the mitigation measures as described by the Final EIR are in fact included with the project approval in an adopted Mitigation Monitoring and Reporting Plan, and (4) direct staff to prepare the Findings and Statement of Overriding Considerations to be returned to Council at its July 7 meeting.

BACKGROUND: In 2006, the cities of Fremont and Union City, Caltrans and ACTA entered into a Memorandum of Understanding (MOU) for the study of the “Local Roadway Improvement (Option 2) Project in Fremont and Union City,” now referred to as the “East-West Connector Project” (see Enclosure 1). The MOU established a framework for funding various transportation improvement projects, including completion of the I-880/Mission Boulevard Interchange, with different funding availability based on whether or not the EWC Project proceeded to design and construction or not. The MOU also provided specific guidance under which the environmental assessment and preliminary design for the Project would be developed and required that specific potential impacts be studied as part of the Project’s environmental process.

One of the requirements of the MOU is to include an alternative that is a truncated version of the full project alternative. The truncated alternative (Alternative 1 in the EIR) constructs only the portion of the project in Union City between Mission Boulevard and Alvarado Niles Road. The MOU states that if Union City approves the EWC Project, but Fremont does not, ACTA will construct this truncated alternative.

ACTA initiated the environmental review process in August 2007. City staff had two opportunities to comment on an Administrative Draft of the Draft EIR. The Draft EIR was released to the public on December 11, 2008. The public had opportunities to learn about the project and present their comments on the DEIR directly to ACTA at two public hearings, one in Fremont and one in Union City. On January 20, 2009 the Council held a Work Session to discuss the Draft EIR and staff’s draft comments. After incorporating input from the Council, staff sent formal comments on the DEIR to ACTA on February 6, 2009 (see Enclosure 2). The comment period ended on February 9, 2009. ACTA received 31 comment letters on the DEIR. At the March 24, 2009 Council Work Session, ACTA presented its initial responses to Fremont’s comments as well as the general approach it would be taking to respond to the public comments they received. ACTA worked with City staff on preparation of the Final EIR and responses to comments from the work session. ACTA released the Final EIR to the public in April. On May 8th ACTA’s Work Program Committee unanimously recommended certification of the Final EIR, and on May 28th, the ACTA Board is scheduled to certify the Final EIR. The ACTA Board is scheduled to Adopt Findings, a Statement of Overriding Considerations, and a Mitigation Monitoring Plan, and approve the Project, at its meeting on June 25th.

The primary objectives of the proposed EWC Project are to reduce local traffic congestion and travel time and to provide an improved direct east-west transportation link in Fremont and Union City between Mission Boulevard and Interstate 880. To achieve this objective, the project includes the widening of Decoto Road and Paseo Padre Parkway from four lanes to six lanes (a distance of 1.7 miles) and constructing 1.3 miles of new 4-lane roadway between Paseo Padre Parkway and Mission Boulevard (approximately one-half mile of which is located in Fremont). The new roadway and the widening of Decoto Road and Paseo Padre Parkway are consistent with the City’s current General Plan. Upon completion of the EWC Project, there would be a continuous bicycle and pedestrian corridor from just

east of I-880 to Mission Boulevard, as well as improved stormwater capacity to reduce the potential for flooding.

Discussion:

Environmental Document: Following review of the Draft EIR, City staff worked with ACTA to modify their responses to several of the impacts in Fremont. First, to ensure that road noise is kept to a minimum, ACTA has agreed to install quiet paving treatments on both the widened areas of Paseo Padre Parkway and Decoto Road, as well as the new roadway. “Quiet pavement” has been shown to reduce noise by 3-5 decibels in some instances and should help reduce noise even in areas where the noise thresholds are not exceeded. Second, several of the intersections that are negatively impacted by the Project could be improved by better signal timing and coordination. Although the Draft document did not include these improvements because they would not reduce the impacts to less than significant, ACTA has now agreed to re-time and coordinate signals where it would improve the overall operation of the intersection.

For several of the identified impacts, the mitigation measures would not be determined until later in the project, after additional design and analysis has been completed. This has been a concern to the Council and City staff because the final mitigation measures would not be known until after the Council has made a decision on whether or not to approve the Project. The EIR states that ACTA would implement “reasonable and feasible” mitigation measures, but the definition of reasonable and feasible is not fully defined. Council was concerned that ACTA could determine that its budget was insufficient to implement what otherwise could be considered reasonable mitigation measures. Staff believes an appropriate solution has been found to these issues.

ACTA’s Draft Mitigation Monitoring Plan, which describes how the mitigation measures will be applied and monitored, allows the City to approve the mitigation measures in Fremont that have not been completely determined at this time. For example, to bring noise levels along the new roadway within the established thresholds, ACTA would perform a future analysis of the first row of homes and within 300 feet of the center of the new roadway alignment to determine whether they have double-pane windows and air conditioning. Where required to meet the noise requirements, ACTA has agreed to install double-pane windows and/or air conditioning in the homes that don’t have them so the windows will have sufficient sound attenuation and can remain closed on warmer days. The Plan also states that these reasonable and feasible mitigation measures would be identified during the final design stage of the project in coordination with, and approval of, the City of Fremont (for Fremont mitigation measures). ACTA would also secure City approval of the locations of new and retrofitted soundwalls. The continuing involvement of the City in the EWC Project is further documented in the MOU, which calls for a Technical Advisory Committee (TAC) made up of ACTA, Caltrans, Union City and Fremont staff, as well as a Policy Advisory Committee (PAC) made up of elected officials from ACTA, Union City and Fremont. The responsibilities of the TAC and PAC include guiding and overseeing the project development. The MOU also calls for the roadways in Fremont to be designed to City standards.

Staff has reviewed the Final EIR and ACTA’s responses to the City’s comments, including the changes noted above. Staff has concluded that ACTA prepared the EIR in compliance with the requirements of the MOU. Further, staff believes ACTA’s responses to the City’s comments are acceptable and the EIR has been completed in compliance with the California Environmental Quality Act (CEQA) and CEQA Guidelines.

To support a decision on a project for which an EIR is prepared, the City, as a Responsible Agency, must prepare written findings of fact (Findings) for each significant environmental impact and each alternative identified in the EIR in accordance with Section 15091 of the CEQA Guidelines. Because the Lead Agency (ACTA) will not present its Findings and Overriding Considerations until its next meeting the City of Fremont's Responsible Agency Draft Findings and Overriding Considerations will not be presented to the City Council until the July 7, 2009 meeting.

Project Approval: As mentioned, the primary objectives of the Project are to reduce local traffic congestion and travel time and to provide an improved direct east-west transportation link in Fremont and Union City between Mission Boulevard and Interstate 880. Although the traffic analysis in the EIR indicates that some intersections in the project area improve with the project, other intersections become more congested. This is a typical result of a major new roadway project because new roadways redistribute traffic, and small traffic changes at a particular intersection can change its level of service. Regardless, increasing the roadway capacity in north Fremont is an important benefit of this project. The historic Route 84 alignment has been in the countywide transportation model for many years because it was a recognized state project with funding from ACTA. Therefore, all traffic studies in Fremont that utilized the County transportation model have assumed that the capacity provided by Route 84 would be available in the future, and projects were approved on that basis. Therefore, to accommodate both past and future projects in the northern part of Fremont, the EWC Project will provide much needed capacity and an additional east-west link.

The current east-west arterial roadway system has a large gap in the northern part of the City between Decoto Road and Peralta Boulevard, primarily due to the location of Quarry Lakes and the missing link of Route 84. The EWC Project will close this gap. It will also provide funding to increase the capacity of Paseo Padre Parkway and Decoto Road that, although they are included in the City's General Plan and Traffic Impact Fee Program, could not be widened for many years based on current revenue forecasts. As evidence of the need for additional roadway capacity in north Fremont, the EWC Project traffic analysis predicts travel times within the corridor in 2035 will be 33 to 56 percent better if the EWC Project is constructed. Finally, the EWC Project would expand and improve the City's bicycle and pedestrian system. Therefore, based on staff review of the engineering and environmental studies, the ability to mitigate the vast majority of the environmental impacts of the Project, and the transportation benefits to the City, staff recommends the Council approve the East-West Connector Project.

ENCLOSURES:

- 1- [Memorandum of Understanding](#)
- 2- [City Comment Letter on DEIR](#)

RECOMMENDATION: Therefore the staff recommends that Council:

1. Consider the environmental effects of the project as shown in the EIR,
2. Certify the EIR as complete and adequate,
3. Approve the project on the condition that the mitigation measures as described by the Final EIR are in fact included with the project approval in an adopted Mitigation Monitoring and Reporting Plan, and
4. Direct staff to prepare the Findings and Statement of Overriding Considerations to be returned to Council at its July 7 meeting.

***4.3 FY 2009/10 PARATRANSIT WORKPLAN**

Adopt a Resolution Authorizing Submittal of a Workplan for the FY 2009/10 Measure B Paratransit Program to the Alameda County Transportation Improvement Authority (ACTIA)

Contact Person:

| | | |
|---------|-----------------------------|----------------------|
| Name: | Shawn Fong | Suzanne Shenfil |
| Title: | Paratransit Program Manager | Director |
| Dept.: | Human Services | Human Services |
| Phone: | 510-574-2033 | 510-574-2051 |
| E-Mail: | sfong@fremont.gov | sshenfil@fremont.gov |

Executive Summary: The Alameda County Transportation Improvement Authority (ACTIA) administers the yearly allocation of Measure B sales tax revenues that are designated for paratransit programs. This funding, approved by Alameda County voters as part of the reauthorization of Measure B in November 2000, provides \$627,397 for the City's paratransit services in FY 2009/10.

In order for the City to access its yearly allocation of Measure B funds, staff was required to forward the City's annual program submittal for funding by March 31, 2009. A Council resolution formally authorizing submittal of the application is also required before fund disbursement by ACTIA. This report briefly describes the paratransit services proposed, and includes a recommendation that Council adopt a resolution authorizing formal submittal of the application.

Under Alameda County Measure B, south county cities must annually determine how to allocate their Measure B funding between local paratransit services, and services mandated under the Americans with Disabilities Act (ADA) and provided by the regional paratransit provider, East Bay Paratransit (a consortium of AC Transit and BART). This report also recommends that Council dedicate all Fremont Measure B paratransit revenues to fund the City-operated Paratransit Program.

A copy of the ACTIA annual program submittal for Measure B funding, which contains a detailed project budget and additional information regarding the program, is enclosed.

BACKGROUND: For many years, the City of Fremont has operated a paratransit program designed to supplement and complement the ADA-mandated services provided by East Bay Paratransit. As a result of the reauthorization of Measure B, the countywide transportation sales tax, Fremont's allocation for City-based paratransit services increased from \$195,000 in FY 2001/02 to over \$700,000 in subsequent years. ACTIA estimates that the City will receive \$627,397 for City-based paratransit services in FY 2009/10. These funds will be provided through an existing agreement with ACTIA. In addition, the City will have about \$72,000 in "carry-forward" funds from FY 2008/09 that are designated in FY 2009/10 for an operational reserve fund.

With the increase in funding since the passage of Measure B, the City has significantly expanded the paratransit services available to Fremont residents. Due to the need for reliable and efficient transportation, the quality of local paratransit service and the extensive outreach and education conducted by staff, program enrollment has grown from approximately 700 to 1,500 participants over

the past six years. Although the program has seen much growth over the years, the significant reduction in projected Measure B revenues for FY 2009/10 will curtail the amount of transportation services the City will be able to deliver in the next year. The impact of reduced revenues is reflected in the program changes and service goals submitted to ACTIA for the FY 2009/10 paratransit workplan.

DISCUSSION/ANALYSIS: The proposed Paratransit Program for FY 2009/10 is based on consumer feedback from the Paratransit Advisory Committee, and has three main service components:

- Door-to-Door Transportation for Individuals
- Group Trips
- In-Home Meal Delivery

Service components are described below:

1. Door-to-Door Transportation for Individuals

The City's door-to-door transportation service is intended as a supplement to, not a replacement for, transportation services provided by East Bay Paratransit. Fremont residents of all ages with verification of disability or disabling health conditions are eligible for this service, as well as seniors who are over 80 years of age, who are automatically eligible. Participants pay a fare of \$3.00 for each one-way trip within the local service area (Fremont, Newark and Union City).

Total individual trips provided in FY 2008/09 will equal about 18,000. For FY 2009/10, the workplan proposes that the City will provide approximately 12,500 door-to-door rides using either sedans or lift-equipped vans. The reduction in projected rides for FY 2009/10 is due to a significant projected reduction in the Measure B sales tax revenues for FY 2009/10 and a slight billing rate increase in the paratransit services agreement for the next contract period. Based on demand patterns, service hours will be from 8 a.m. to 6 p.m. on weekdays, and from 9 a.m. to 3 p.m. on weekends. Eligible program participants will receive a minimum of eight (8) one-way trip vouchers per month. The City will maintain the flexibility to increase or decrease the number of trip vouchers distributed during the course of the year based on service demand, program capacity and operating costs.

2. Group Trips

Based on consumer input, the City will continue its popular Group Trip service. The Group Trip component provides outings for seniors and persons with disabilities, many of whom are isolated due to disabling health condition(s), language barriers or major life crises (e.g., death of a spouse). The City provides several social and recreational group trips per week; individuals participate in the group trip program either through City-facilitated outings or through outings facilitated by community organizations serving older adults and persons with disabilities. The program staff (including outreach workers who are fluent in Mandarin, Farsi and Spanish) recruit program participants, coordinate group trips, schedule trips with the contractor, and facilitate social interaction and the development of personal friendships among program participants. Program participants pay \$2 each way for Group Trip transportation. About 12,000 group trip rides will be provided in FY 2008/09. The program will provide approximately 6,000 group trip rides in FY 2009/10. The reduction in projected rides for FY 2009/10 is due to a significant

projected reduction in the Measure B sales tax revenues for FY 2009/10 and a slight billing rate increase in the paratransit services agreement for the next contract period.

3. In-Home Meal Delivery

For FY 2009/10, staff is proposing to continue to use Measure B funds to pay for meal delivery services through LIFE ElderCare's Meals on Wheels Program. A majority of Meals on Wheels participants are low-income, homebound, and at-risk of institutionalization. The City's funding for the Meals on Wheels Program provides nutritionally balanced meals for program participants, and thus eliminates trips that may otherwise be needed for shopping or meals. ACTIA has determined that meal delivery is an allowable use of Measure B funds, and other cities, including Hayward and Newark, also use the funds for this purpose. The City will contract with LIFE ElderCare to provide a total of 53,500 meals to seniors and individuals with disabilities residing in Fremont.

Public Input Process: Staff has established a local Paratransit Advisory Committee (PAC) to provide feedback on the operations of the City's Paratransit Program and to help identify unmet paratransit needs in the Fremont community. The PAC is comprised of paratransit consumers, representatives of social service agencies that work with seniors and individuals with disabilities, and members of the City's Senior Citizens Commission. Members of the PAC have endorsed the workplan and service parameters for FY 2009/10, as has the Fremont Senior Citizens Commission.

Available Funds: Measure B provides a specific allocation for paratransit services in each region of the County, including the Tri-Cities. According to ACTIA's current sales tax projections, the City's expected share for paratransit services in FY 2009/10 will be \$627,397. In addition, the City will have approximately \$72,000 in "carry-forward" operating reserve funds. In FY 2009/10, staff anticipates utilizing a significant portion of the reserve fund for operations to maintain services provided over the past year. Staff estimates that, at the end of FY 2009/10, reserve funds will equal about \$9,000. This reserve fund amount is allowable by ACTIA for operating reserves.

Projected Expenditures: The Paratransit Program budget contains line items for the following functions: trip provision, meal delivery, customer service and outreach, and management activities.

- 1. Trip Provision Activities (contracted and non-contracted):** The City currently contracts with MV Transportation, Inc., to provide door-to-door transportation for individuals and group trip services. The contract with MV Transportation is due to expire on June 30, 2009. On March 17, 2009, the City issued a Request for Proposals for paratransit service delivery in order to select a vendor for FY 2009/10 through FY 2010/11. The staff recommendation that the City contract with MV Transportation for the next two fiscal years is included as a separate item on this agenda. The total compensation amount for the paratransit services contract for FY 2009/10 will be \$385,000. City-provided trip provision activities are also included in the program and budget, as allowed by ACTIA. City-provided trip provision activities include staff coordination of group trips, vehicle inspections, voucher distribution, and processing of pre-paid voucher fares.

2. **Meal Delivery Activities:** Staff is proposing to support the Meals on Wheels Program with \$47,460 in Measure B funds, to supplement the senior service grant funds in the amount of \$38,727.
3. **Customer Service and Outreach:** In community outreach meetings facilitated by staff, one of the most common consumer complaints regarding the regional paratransit service provided by East Bay Paratransit was poor customer service. Staff's experience operating the City-based service is that it is critical to the success of the service to dedicate resources to customer service. Customer service/outreach activities include eligibility determinations, consulting assistance to riders, and outreach to potential riders, caregivers and service providers.
4. **Management Activities:** Management activities include program oversight, planning, budgeting, fiscal management, contract management, maintenance and compilation of program statistics, overhead, and participation in regional meetings.

Budget: The proposed FY 2009/10 program budget is outlined below.

| <u>Available Funds</u> | <u>Trip Services</u> | <u>Meal Delivery</u> | <u>Total</u> |
|------------------------------|----------------------|----------------------|------------------|
| Measure B | \$579,937 | \$47,460 | \$627,397 |
| Fares (retained by City) | \$15,000 | -- | \$15,000 |
| Fares (retained by Vendor) | \$30,000 | -- | \$30,000 |
| Reserve Funds - operations | \$72,416 | -- | \$72,416 |
| Social Service Grant - | | | |
| Meal Delivery Funding | -- | \$38,727 | \$38,727 |
| Total Funds Available | \$697,353 | \$86,187 | \$783,540 |

| <u>Expenditures</u> (by function) | <u>Total</u> |
|---|------------------|
| Trip Provision | \$461,456 |
| Meal Delivery | \$86,187 |
| Customer Service/Outreach | \$149,625 |
| Management | \$76,954 |
| Total Expenditures | \$774,222 |
| Reserve Funds (estimated at the end of FY 2009/10) | \$9,318 |

More detailed budget information is included in the attached application. The budget is also included in the proposed FY 2009/10 operating budget, scheduled for Council consideration and adoption on June 9, 2009.

Allocation of Measure B Funds: Under Alameda County Measure B, south county cities, including Fremont, must make an annual determination of how to allocate funds between local city-operated programs ("non-mandated services") and East Bay Paratransit ("ADA-mandated services"). In the past,

Council has allocated all funds to the non-mandated, city-operated service. Staff believes that Council should continue this policy for the following reasons:

- East Bay Paratransit is required to provide paratransit services in Fremont under the ADA, and is required to fund these services out of its own budget. Any Measure B contribution provided by the City would simply offset costs incurred by East Bay Paratransit, not provide any additional services to local residents.
- The City-operated program provides a higher level of customer service and outreach than the regional ADA-mandated service, which staff believes is necessary for a successful service.
- The non-mandated service has now grown to the point that if any funds were allocated for ADA-mandated services, the City-operated paratransit service would have to be significantly reduced.

FISCAL IMPACT: There is no fiscal impact on the City's General Fund because paratransit program operations are entirely funded through the Measure B half cent sales tax.

ENCLOSURES:

- [Exhibit A: Draft Resolution](#)
- [Exhibit B: Alameda County Transportation Improvement Authority, Special Transportation for Seniors and People with Disabilities, Annual Program Submittal for Measure B Funding, Fiscal Year 2009/10.](#)

RECOMMENDATIONS:

1. Adopt a resolution authorizing submittal of the City's application to ACTIA for paratransit funding under Measure B.
2. Authorize the City Manager or his designee to notify ACTIA that the City is allocating all Measure B paratransit revenues to the City's non-mandated paratransit program.

***4.4 PARATRANSIT CONTRACT FOR FY 2009-2011**

Authorize the City Manager to Execute a Contract with MV Transportation for Delivery of Non-ADA Paratransit Services

Contact Person:

| | | |
|---------|-----------------------------|-----------------------|
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| Dept.: | Human Services | Human Services |
| Phone: | 510-574-2033 | 510-574-2051 |
| E-Mail: | sfong@fremont.gov | sshensfil@fremont.gov |

Executive Summary: In March 2009, the City of Fremont issued a Request for Proposals to transportation firms for the delivery of city-based paratransit services for the period July 1, 2009 – June 30, 2011. Upon review of the two proposals received, staff recommends that Council authorize the City Manager to enter into a contract with MV Transportation to deliver paratransit services.

BACKGROUND: For many years, the City of Fremont has operated a Paratransit Program designed to supplement and complement the Americans with Disabilities Act (ADA)-mandated services provided by East Bay Paratransit (a consortium of BART and AC Transit). Fremont's Paratransit Program currently provides the following subsidized transportation services to eligible elderly and/or disabled Fremont residents:

- 1) Door-to-door transportation in sedans or lift-equipped vans for medical appointments, shopping, errands and other needed trips.
- 2) Social and recreational group outings for individuals who are isolated due to disabling health conditions, language barriers and/or major life changes.

Funding for the program is provided through "Measure B", a countywide half cent sales tax designated for transportation projects. Measure B funds are administered by the Alameda County Transportation Improvement Authority (ACTIA). During the past year, staff solicited public input regarding community paratransit needs. Based on feedback received, staff developed and submitted a Paratransit Services Workplan (Plan) for FY 2009/10 to the Alameda County Transportation Improvement Authority (see accompanying Council item).

DISCUSSION/ANALYSIS: The plan submitted to ACTIA envisions that \$385,000 of the City's FY 2009/10 Paratransit Program budget will be dedicated to a contract with a transportation vendor for individual and group rides. This contract will be funded by Measure B funds and fares retained by the vendor for rides, up to a combined maximum of \$385,000. Under the plan, the City will provide approximately 12,500 individual trips and 6,000 group trips during FY 2009/10.

Since July 1, 2003, Fremont's paratransit services have been provided by MV Transportation, Inc. (MV Transportation). The City's contract with MV Transportation is due to expire on June 30, 2009. On March 17, 2009, the City issued a Request for Proposals (RFP) for paratransit service delivery in order to select a vendor for FY 2009/10 through FY 2010/11.

Six transportation service providers received the RFP. Of these, MV Transportation and American Logistics submitted bid proposals. The two applicants were evaluated and interviewed by the Paratransit Proposal Review Committee (Committee). The Committee included a paratransit program manager from another city, a representative from the Fremont Senior Citizens Commission, and the City of Fremont's Paratransit Program Manager. The proposals were reviewed and rated according to the following criteria:

- Company's qualifications, experience and references (maximum score: 25 points)
- Operations and maintenance plan (maximum score: 25 points)
- Start-up plan (maximum score: 20 points)
- Cost proposal (maximum score: 20 points)
- California Labor Code Section 1072 (a) provisions (maximum score: 10 points)

Based on the review of the proposals and the Committee's discussion about each applicant's strengths and weaknesses, the Committee gave MV Transportation's proposal a score of 92 and American Logistic's proposal a score of 71. The Committee rated MV Transportation with higher scores than American Logistics on four of the five evaluation criteria (i.e., qualifications, experience and references, operations and maintenance plan, start-up plan, and labor code provisions) and with a slightly lower score than American Logistics on the cost proposal criteria.

Additionally, the Committee felt that MV Transportation's successful performance on the existing paratransit services contract over the last six years provides an added benefit to the City because the company:

- Has current knowledge about the Fremont Paratransit Program and is familiar with the program's participants, service area and other related service parameters.
- Has delivered high quality transportation services and provided excellent customer service.
- Has demonstrated its ability to meet the City's program requirements under the previous contract.
- Is very familiar with reporting and operating requirements for Measure B-funded programs.

Staff, therefore, recommends that the City Council authorize the City Manager or his designee to enter into a contract with MV Transportation for delivery of paratransit services for the period beginning July 1, 2009 through June 30, 2011, with two additional one-year options conditioned on the City's satisfaction with contractor's performance and, for each year after FY 2009/10, the availability of funds. The compensation amount of the initial two-year contract shall not exceed \$385,000 for each fiscal year. All terms and conditions will remain the same during each subsequent contract period except for increases in the billing rate which will be tied to the Consumer Price Index. The contract amount for each subsequent option year will be determined prior to the exercise of each renewal option, and will be dependent on the paratransit budget and the community's transportation needs. Staff will evaluate performance based on feedback received from the Fremont Paratransit Advisory Committee and from customer surveys that will be completed near the end of the first contract period.

FISCAL IMPACT: There is no fiscal impact on the City's General Fund because paratransit program operations are entirely funded through the Measure B half cent sales tax. Funding is included in the proposed FY 2009/10 operating budget, scheduled for Council's consideration and adoption on June 9, 2009.

ENCLOSURE: None

RECOMMENDATION: Authorize the City Manager or his designee to execute a contract with MV Transportation for the provision of the City of Fremont's Measure B-funded paratransit service from July 1, 2009 through June 30, 2011, for up to \$385,000 for each fiscal year, with two additional one-year options as described in the staff report contingent on satisfactory performance and, for each year after FY 2009/10, the availability of funds.

***4.5 KATO ROAD IRREVOCABLE OFFER OF DEDICATION - PARCEL MAP 7206**
Adopt a Resolution Accepting an Irrevocable Offer of Dedication on Kato Road for Streets and Highway Purpose as Described on Parcel Map 7206

Contact Person:

| | | |
|---------|-----------------------|-----------------------|
| Name: | Randy Sabado | Norm Hughes |
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| Dept.: | Community Development | Community Development |
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Executive Summary: The purpose of this report is to request that the City Council adopt a resolution accepting an irrevocable offer of dedication on a property adjacent to Kato Road for public highway purposes as described on Parcel Map 7206.

BACKGROUND: In 1997, Opus South West submitted an application for a tentative parcel map for a five lot subdivision located at 48870 Kato Road. At that time, it was anticipated that Kato Road would be grade-separated under the existing Southern Pacific and Western Pacific railroad lines to accommodate the BART extension to San Jose. As a result, the property owners were required, on Parcel Map 7206, to make an Irrevocable Offer of Dedication (IOD) to the City for certain areas of their property for public highway purposes. This area consists of a triangular-shaped portion along the Kato Road frontage containing approximately 14,900 s.f.. Upon acceptance, the IOD would also relinquish vehicular access along approximately 600 lineal feet adjacent to Kato Road. The Parcel Map was approved in 1998. However, because the final design and funding for the grade separation of Kato Road were not in place at that time, the IOD for the Kato Road right of way was rejected with the City reserving the right to accept the IOD at some time in the future to be determined by the City Engineer. The attached map outlines the IOD area.

The Santa Clara Valley Transportation Authority (VTA) is the implementing agency responsible for the design and construction of the Kato Road Grade Separation Project, which will construct a grade separation of the Union Pacific Railroad (UPRR) on Kato Road between Warm Springs Boulevard and Milmont Drive in the Warm Springs District. The current schedule provides for construction to begin in mid-2010. As noted, the construction of this project is needed prior to the BART extension to Santa Clara County. VTA will fund and construct this \$40.2 million project, and the City will assist in acquiring the needed right of way. Twenty-two properties with ten owners will be impacted, including VTA, UPRR, Alameda County Flood Control and the Water District, four commercial properties, two residential subdivisions, and one Home Owners Association. One of the properties impacted is owned by Walton CWCA Scott Creek 28, LLC. , the current owner of the former Opus South West property.

According to the project plans, the area covered by the IOD on the Walton property will be excavated, with tieback supports and deep soil mix (DSM) retaining walls constructed. In addition, the utility and storm drains will be relocated within the IOD area and a new pump-station will be constructed. The pump-station is needed to remove any excess water within the depressed areas of Kato Road. The project will restore the surface area of the IOD behind the new retaining wall after the construction is complete.

In order to proceed with the construction of the Kato Road Grade Separation Project within the IOD areas, the offer of dedication must be accepted by the City. Staff recommends the City Council adopt a resolution accepting the IOD as described in Parcel Map 7206.

Environmental Review: The proposed project is a component of the Kato Road grade separation project. The grade separation of existing at-grade crossings is exempt from project review under the California Environmental Quality Act by Public Resource Code Statute 21080.13.

ENCLOSURES:

- [Draft Resolution](#)
- [Map outlining the Irrevocable Offer of Dedication Area](#)

RECOMMENDATION: Adopt a Resolution Accepting the Irrevocable Offer of Dedication as shown on Parcel Map 7206.

***4.6 AWARD CONSTRUCTION CONTRACT FOR THE NILES TOWN PLAZA SITE IMPROVEMENTS (PWC8614E)**

Approve Plans and Specifications and Award a Construction Contract for the Niles Town Plaza Site Improvements, City Project No. PWC 8614E

Contact Person:

| | | |
|---------|-----------------------------------|--------------------------------------|
| Name: | Josh Huber | Robert Kalkbrenner |
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Executive Summary: This report recommends that the City Council approve the plans and specifications for Niles Town Plaza Site Improvements, accept the bid, and award the construction contract to Star Construction, Inc., for the base bid amount of \$1,573,534.83, plus Alternate #2 for \$28,237.00, for a total contract amount of \$1,601,771.83.

BACKGROUND: In April 2002, the Redevelopment Agency entered into a service agreement with RRM Design Group for master planning services for the former Union Pacific Railroad Property (UP Property) Study Area in Niles. The 5.25-acre former UP Property, the key parcel in the larger Study Area, has been controlled by the Redevelopment Agency since January 2000, and owned by the Agency since 2005. The focus of this master planning effort was the creation of a public plaza and community gathering place on a two-acre portion of the UP Property, located in the heart of the Niles Redevelopment Project Area.

On April 10, 2007, the City Council awarded a construction contract to Pacific State Environmental Contractors Inc., for the soil remediation needed to clean and prepare the Niles Town Plaza for construction. The soil removal and replacement was completed in December 2007. On January 7, 2008, the City Manager executed an agreement with Sprint Communications Company L.P., to relocate fiber optic communications conduits from within the Plaza property to the adjacent Union Pacific Railroad right-of-way.

The Niles Town Plaza project is being constructed in a number of phases in order to be responsive to the community's interest to keep the project on track. To date, construction work completed for the Plaza includes the site HAZMAT remediation, Sprint underground communication lines relocation, underground utilities installations, freight and passenger buildings lead and asbestos abatement, and the moving and renovation of the freight building.

Project Description: Niles Town Plaza is located on the north side of Niles Boulevard between I Street and H Street. This phase of the project will complete the site work by installing the fountain and mechanical vault, earthwork and grading, installing pathways and brick work, seat walls and site furnishings, site lighting and electrical, planting and irrigation, and the adjacent parking areas. The contract documents call for 70 working days to complete the construction.

Bid Results: The City received ten (10) bids for the construction of the Niles Town Plaza Site Improvements on May 6, 2009. The lowest base bid was submitted by Star Construction, Inc., for \$1,573,534.83, and is approximately 15% below the project estimate. All bidders and their respective bid amounts are shown below:

| <i>Contractor</i> | <i>Base Bid Total</i> | <i>Rank</i> |
|----------------------------------|-----------------------|-------------|
| Star Construction, Inc.** | \$1,573,534.83 | 1 |
| Robert A. Bothman, Inc.** | \$1,695,301.44 | 2 |
| Perma Green Hydroseeding, Inc.** | \$1,736,443.82 | 3 |
| Redgewick Construction, Inc | \$1,774,075.80 | 4 |
| Maxicrete, Inc. | \$1,799,552.15 | 5 |
| Cal State Construction, Inc. | \$1,914,316.00 | 6 |
| Sposeto Engineering | \$1,952,085.95 | 7 |
| Gordon N. Ball, Inc. | \$1,963,623.00 | 8 |
| Pavex Construction, Inc. | \$1,965,233.40 | 9 |
| Bay Construction, Co | \$2,218,763.32 | 10 |

**Mathematically corrected
Engineer's estimate: \$1,863,000

The low monetary bidder for the project, Star Construction, Inc., is a responsible bidder experienced in this type of work. Their bid is responsive and all bid documents are in order. The low bidder was chosen by evaluation of the base bid only, without consideration of the alternate items, as is stated in the Instructions to Bidders. Because there are additional funds available, staff recommends awarding one of the alternate items. Alternate 2 was chosen because the green vegetated arch is a dramatic feature and will have a greater impact on the site.

Appropriations: The proposed contract for the Niles Town Plaza Site Improvements (City Project PWC 8614E), in the amount of \$1,601,771.83, will be funded from the Niles Town Plaza Redevelopment Agency Project (951 RDA 1032 and 951 PWC 8639). Niles Town Plaza is part of the approved Redevelopment Agency work plan. Sufficient funding exists for the proposed contract.

Project Schedule: Construction is anticipated to begin in June 2009 with completion anticipated in fall 2009.

Environmental Impact: California Department of Toxic Substances Control, as lead agency, prepared and certified a negative declaration on September 28, 2006, in conjunction with its approval of the Remedial Action Plan (RAP) for this project. In addition, the City prepared a mitigated negative declaration (MND) in conjunction with a conditional use permit for the project, both of which were approved by the Planning Commission on April 12, 2007 (Item 5.1). An Addendum to the MND was prepared on August 13, 2007, to reflect a change in the location of the Freight Building. On September 13, 2007, the Planning Commission approved an amended Conditional Use Permit and found that it was

within the scope of the previously approved MND and the Addendum. No further CEQA documentation is necessary.

ENCLOSURE: [Niles Town Plaza Site Improvements plans from the construction plans and specifications](#)

RECOMMENDATIONS:

1. Approve the plans and specifications for the Niles Town Plaza Site Improvements (City Project No. PWC 8614E).
2. Award the contract for the construction of the Niles Town Plaza Site Improvements to Star Construction, Inc., for the base bid amount of \$1,573,534.83, plus Alternate #2 for \$28,237.00, for a total contract amount of \$1,601,771.83, and authorize the City Manager or his designee to execute the contract.

***4.7 REJECTION OF BID – SECURITY SYSTEM MAINTENANCE CENTER**
Rejection of Bids for Security System Renovations at the Maintenance Center, City Project No. PWC 8376

Contact Person:

| | | |
|---------|-----------------------|-------------------------------|
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Executive Summary: The purpose of this agenda report is to recommend the City Council reject all bids received May 5, 2009 for Security System Renovations at the Maintenance Center, due to excessive cost; and authorize staff to implement more cost-effective measures at the Maintenance Center after security renovations at the Police Facility and the Main Library are accomplished.

BACKGROUND: The Maintenance Center construction completion was disrupted during construction by the bankruptcy of the general contractor. One consequence of the bankruptcy was the perimeter detection security system was left incomplete. As part of the final Settlement Agreement, the City agreed to complete the security system, if it desired.

This project will complete the perimeter detection security system with the addition of approximately 1200 linear feet of additional infrared beam sensors, commissioning of approximately 2600 linear feet of intrusion motion detection cable on the fences, and commissioning of the security CCTV video, alarm zones and access controlled doors. Commissioning in this context means the testing, balancing, and fine-tuning of the system to work most optimally.

Bid Results: One bid was received on May 5, 2009, as shown below.

| Contractor | Bid Amount | Rank |
|---|------------|------|
| Mesa Energy Systems, Inc. dba Emcor Services Integrated Solutions | \$127,640 | 1 |

Engineer's Estimate \$55,000

Only one bid was received for this project from Mesa Energy Systems, Inc. dba Emcor Services Integrated Solutions of Pleasanton, California. Consequently, they are considered the lowest responsible bidder and all of their documents are in order. The bid, however, is over twice the engineer's estimate for the work.

Discussion: The existing security at the Maintenance Center does not work as originally designed. Portions of the security system were either not completed or do not operate correctly. A number of problems exist because there are design integration issues. In some areas, the landscaping blocks the sensors, while in other areas, high winds cause portions of the system to shut down. In addition, the lack of offsite monitoring integration of systems make it very difficult to remotely verify and confirm an actual security breach. As a result, there are an excessive number of false alarms that are not able to be

verified remotely. This contract, if awarded, would address these issues and improve the security at the Maintenance Center. These issues were not fully resolved during construction because of the bankruptcy of the original contractor and the impracticality of working through the system integration with the bonding company.

The design consultant's original estimate understated the amount of testing perceived to be required to commission the system. Upon further review of the post-bid documents received, the consultant determined the bid is a reasonable price for the work required by the bid documents. Staff, however, upon reviewing the scope of work, recommends the single bid be rejected because of excessive cost. Staff recommends proceeding with security projects at the Police Building and Main Library as priorities before this project is re-bid.

Project Costs and Funding: PWC 8376 contains the Capital Improvement appropriations approved by City Council for improving and integrating security measures at other City-owned facilities. If Council wishes to award this project, then based on current estimates, sufficient funding should be available in PWC 8376 to complete this project in addition to security projects planned at the Police Building and Main Library. The current fund balance as of April 30, 2009 is \$593,136.95.

Contract Duration: If awarded, the contractor will perform and substantially complete the work for this contract in 120 calendar days. Staff has calculated liquidated damages of \$300 per calendar day for the contractor's failure to complete the work within the specified contract time and recommends the City Council approve this provision if the contract is awarded.

Environmental Impact: This project is categorically exempt under Section 15301(a) of the California Environmental Quality Act as a maintenance project, Title 14 California Code of Regulations.

Design Consultant: Security By Design.

Spending Limit Impact (Article XIII B): None.

ENCLOSURE: None

RECOMMENDATION: Reject all bids received on May 5, 2009 as excessive, and authorize staff to implement more cost effective measures at the maintenance center after security renovations at the Police Facility and the Main Library are completed.

7.1 PUBLIC HEARING ON THE FY 2009/10 OPERATING BUDGET

First Public Hearing and Council Direction to Staff on the Proposed Fiscal Year 2009/10 Operating Budget

Contact Person:

| | | |
|---------|------------------------|----------------------|
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Executive Summary: The purpose of this report is to recommend that the City Council hold a public hearing on the FY 2009/10 operating budget. The second public hearing and adoption are scheduled for June 9, 2009.

BACKGROUND: The City Council held a work session on May 26, 2009, to consider the City Manager's proposed budget for fiscal year 2009/10. Following tonight's first public hearing, a second public hearing is scheduled for June 9, 2009. Council may adopt the budget, following the public hearings, on June 9, 2009.

Discussion: The following information is from the Budget Overview section of the proposed budget document. It sets the context for the proposed budget by describing the opportunities and challenges the City will address and the major initiatives underway. It also summarizes the budget strategies proposed for FY 2009/10.

These are unsettling times for the City of Fremont. The prolonged and unusually deep recession gripping the country has reduced both our current revenues and our projected revenues dramatically. Our sales taxes and property transfer taxes have seen significant drops over the past two years, reflecting the sharp downturn in the housing market and the fallout of the sub-prime mortgage crisis. We must reduce spending now to resize the organization to a level at which our expenditures will not exceed our reduced revenues.

The sub-prime mortgage crisis and housing market collapse discussed in last year's budget document triggered an economic plunge at both a national and a global level. Virtually every major industry has suffered loss and the broadest measure of productivity in the United States, gross domestic product, contracted at over 6% in both the fourth quarter of 2008 and the first quarter of 2009. Such shrinkage in gross domestic product has not occurred since the late 1970s. As it often does, California led the way into this economic abyss. Many of California's most promising industries suffered bruising business reversals, its home values fell at among the highest rates in the nation, and its unemployment rate has surged to almost 11%. These grim economic shocks have rocked the local economy and, not unexpectedly, they are affecting the City's budget.

Declines in construction and consumer spending have yet again thwarted the State of California's attempt to fashion a sustainable business model. The State is facing yet another budget shortfall due to fundamental problems with the State's budget system. The likelihood of the State at least attempting to

raid local coffers to solve its inability to balance its own budget is high. Like many cities in California, Fremont continues to face a volatile and uncertain economic future and remains cautious because of concerns about economic performance and the possibility of more State takeaways of local revenue. Economists at Beacon Economics have characterized the national financial situation as a deep recession, but not a depression. They expect economic recovery to occur in early to mid-2010 – except that recovery in housing will be delayed until 2012 because of the amount of inventory currently on the market. According to the UCLA Anderson Forecast, “2009 is still rather gloomy for the East Bay economy, with the expectation of turnaround at year’s end.” These economic forecasts do not bode well for the revenues of California governments.

City finances, and the community services that depend on those resources, have been severely strained because of years of State takeaways of traditionally local revenues. This is compounded by a serious recession in the early years of this decade and an even more severe recession now. The revenue takeaways started in the early 1990s with ongoing shifts of local property taxes to the Education Revenue Augmentation Fund (ERAF). Since then, Fremont has lost over \$144 million to ERAF, and this amount continues to grow by roughly \$13.7 million a year. These losses are partially offset by increased Proposition 172 sales tax and COPS funding for law enforcement, resulting in a net annual loss for Fremont of \$12 million and a net cumulative loss for Fremont of \$121.7 million.

The City met previous difficult times by reducing spending throughout the organization and by focusing on attracting and retaining retail businesses to increase revenue. Staff has been vigilant and disciplined over the past several years to not increase the workforce (other than for critical public safety needs) and to keep staffing levels lean. Because we were proactive, the City can now face yet another economic downturn and the prospect of still more State takeaways with effective options, rather than being forced to merely react. In December 2007, we began a belt-tightening strategy that will help soften the impact of the further reductions we must now make. A dollar saved today is one we won’t have to cut in the future, and the organization has taken that to heart. Even so, some very difficult cuts and service reductions are necessary in order to make sure we can live within our means.

Total budgeted resources in the coming fiscal year will be adequate to support total budgeted expenditures of \$136 million, so the budget is considered to be balanced. The FY 2009/10 budget also maintains the City Council’s long-standing funding priorities by allocating over three-quarters of the budget to direct costs for public safety and maintenance. The share of General Fund resources budgeted for these purposes is actually 90% when overhead costs required to support these functions are allocated. Although we are continuing to fund some of the much-needed public safety staffing added in FY 2007/08, the FY 2009/10 budget continues most of the service reductions implemented since FY 2002/03. In order to make sure we can live within our means, sustainable reductions throughout the organization are included in the proposed budget, consisting of 5% reductions for public safety, 10% reductions for other departments, and a 20% reduction of the fee-based expenditures in the Community Development Cost Center because of the significant decline in permit activity. In addition, the strategies adopted in December 2007 – a 1% General Fund savings target and not filling many staff vacancies – will become permanent reductions in FY 2009/10. The FY 2009/10 budget is 7.7% less than last year’s adopted budget.

Property taxes are expected to remain the City’s largest revenue source in FY 2009/10. Despite the decline in other major revenues since the peak year of FY 2000/01, property tax revenues have remained

relatively strong. Although the extremely vigorous real estate market sales activity of the past few years has slowed dramatically in Fremont, the City's FY 2009/10 property tax revenues are based on assessed property values as of January 1, 2009. The County Assessor is seeing increased valuation appeals activity, but even so, Fremont properties are holding their value better than elsewhere in Alameda County and the state. Therefore, property tax revenues are projected to grow in FY 2009/10 by 1.4%, to \$62.2 million.

In contrast to the consistently strong property tax trend, sales tax trends are emblematic of the City's broader revenue volatility. After reaching a high point of \$33.2 million in FY 2000/01, sales tax revenues endured a multi-year decline to a low point of \$26.8 million in FY 2003/04. The steep drop was caused by the collapse of the Silicon Valley technology market and Fremont's reliance on sales tax from high-tech manufacturers. Since that time, sales tax from the high-tech and biotech sectors now appears to be stabilizing, and City efforts to diversify and strengthen our sales tax base by increasing the consumer retail sales and auto sales tax bases also have been a big help. Unfortunately, the consumer spending collapse, fueled by rising unemployment, foreclosed homes, and a sense of consumer panic following the financial market melt-down that occurred in September and October 2008, is now taking a toll on our sales tax revenues. Two of our automobile dealerships and one major electronics retailer have closed, and other retailers are struggling. As a result, we expect to see a 6.6% decline in our sales tax revenue in FY 2008/09, followed by a 2.5% decline in FY 2009/10, to \$32.4 million (including the "triple flip" property tax replacement for one-quarter of our sales tax).

If, in a given year, total resources available exceed total uses, the "surplus" increases fund balance. Fund balance has been a crucial resource for cushioning the City's transition to a lower revenue base in recent years. Instead of spending all of the surplus during the "boom" years of the late 1990s, the City set aside a portion of those revenues in fund balance for use in future lean years.

In FY 2008/09, the City is expecting to use all of its remaining \$3.2 million fund balance, plus \$7.3 million from the Budget Uncertainty Reserve (up from the \$4.1 million anticipated at the time the FY 2008/09 budget was adopted in June 2008, before the global financial market crisis erupted in the fall of 2008). In FY 2009/10, another \$3.6 million of the Budget Uncertainty Reserved will be needed to balance the budget. Based on all the data we have at this time and economic forecasts from a range of sources, we are making the following key assumptions for the FY 2009/10 budget:

1. Sustainable budget reductions are necessary in FY 2009/10, resulting in a budget that is 7.7% less than the year before.
2. General Fund resources will decline by a little less than 1%, in contrast to the more typical growth experienced in prior years of at least 4%. When compared to the FY 2008/09 adopted budget, the revenue decline is actually 5.4%.
3. A reduction of 1% of expenditures and the "freezing" of selected vacant positions that was implemented in December 2007 and continued through FY 2008/09 will become permanent in FY 2009/10.
4. The worsening State budget continues to be a threat, which means that this budget should be considered **"provisional"** in nature, with additional modifications likely needed during FY 2009/10.

5. No specific provision is made for future State takeaways in the proposed budget. However, the City will be ready to respond to any such take-aways confirmed by State legislative action when the amount and timing are known, and we will return to Council as needed.
6. In addition to the departmental reductions, total expenditures in the FY 2009/10 budget and the forecast for FY 2010/11 include nonspecific savings of \$1.5 million per year (approximately 1.0% of total budgeted expenditures and transfers out in FY 2009/10) to compensate for the historical tendency to under-spend total resources allocated (e.g., variable rate debt costs are often less than the budgeted amount, which is calculated in accordance with debt covenants).
7. The FY 2009/10 budget does not include any prefunding of the City's other post-employment benefit (OPEB) liabilities, nor does it include any contribution to capital projects. These items begin to be funded again in FY 2011/12.
8. The City will prepay its FY 2009/10 employer contribution to CalPERS, resulting in an estimated savings to the General Fund of \$950,000.
9. The General Fund's primary reserves, which previously totaled 15% of total expenditures and transfers out, will be reduced by Council action to 12.5% of total expenditures and transfers out. In addition, \$7.6 million in reserves will be spent over the next two fiscal years – \$3.6 million of the remaining Budget Uncertainty Reserve in FY 2009/10 and \$4.0 million (the rest of the original Budget Uncertainty Reserve and \$3.7 million resulting from the change in reserve policy) in FY 2010/11.

Impact of State's Financial Condition: The instability of the State budget continues to be a real threat to local governments, including Fremont. In October 2008, the State finally passed a budget for FY 2008/09 that relied heavily on debt and deferral of expenses. That budget was out of balance as soon as it was passed because it was based on revenue projections from the spring that had not been updated. In late 2008, the State's budget problems got even worse as a result of the financial market credit crisis and the national recession. By January 2009, the State projected that it would face a \$40 billion shortfall by the end of FY 2009/10 if no corrective actions were taken.

In late February 2009, the State adopted a revised FY 2008/09 budget and a budget for FY 2009/10. The relative value of the package of solutions for the 18-month period ending June 30, 2010, is as follows:

| | |
|-------------------------------------|--------------------|
| Tax increases and other revenues | \$12.7 billion |
| Spending reductions and fund shifts | 22.6 billion |
| Borrowing | <u>5.4 billion</u> |
| Value of total package | \$40.7 billion |

Among the tax increases are a 1% increase in sales tax through FY 2011/12, an increase in the vehicle license fee (VLF) to 1% through FY 2011/12, and a further increase in the VLF of 0.15% for local public safety programs through FY 2010/11.

On May 19, 2009, California voters went to the polls to decide the fate of six ballot initiatives that were necessary to implement all the provisions of the FY 2009/10 State budget. A key measure was Proposition 1A, which would have changed the State budget process and could have limited future deficits and spending by increasing the size of the State "rainy day" fund, for use during economic downturns and other purposes, and requiring above-average revenues to be deposited into it. If

Proposition 1A had passed, the 1% sales tax increase would have remained in effect for one additional year, through FY 2012/13, and the VLF increase would have remained in effect through FY 2012/13.

Even with the adoption of the FY 2009/10 budget package and assuming that all of the propositions on the May 19 ballot had passed, the State would still face multibillion-dollar budget shortfalls in the coming years, for a number of reasons. First, the State's economic recovery from the recession is expected to be relatively slow. According to the State Department of Finance, the outlook for the California economy is for negative growth in 2009, followed by weak growth in 2010, and better growth in 2011. The State Department of Finance does not expect the economy will improve significantly until credit becomes more readily available. In addition, many of the solutions adopted as part of the FY 2009/10 budget are short-term in nature – meaning that they will not help balance the budget in future years. Consequently, based on current projections, the State will need to adopt billions of dollars in additional spending reductions, tax increases, or other solutions in the coming years.

On May 14, 2009, the Governor issued his May Budget Revise, consisting of two proposals contingent on the outcome of the May 19 special election. Because of continuing revenue shortfalls, the State expects to have a \$15.4 billion deficit to resolve in FY 2009/10, even if the voters had approved the six measures on the May ballot. Because the voters rejected those measures, the State budget deficit is now expected to grow to \$21.3 billion. As a result, the Governor proposes to borrow \$2 billion in property taxes from local government under the provisions of Proposition 1A of 2004, among other things. This appears to be the only impact on local government, but education and social services will likely be further impacted. The Governor's budget proposal does not include taking any property tax increment from redevelopment agencies. While somewhat encouraging, it is important to remember that any budget proposal requires a 2/3 vote of both houses of the State Legislature and the Governor's signature in order to take effect.

Proposition 1A of 2004 provides that the State can borrow 8% of local property taxes no more frequently than twice every 10 years, and the second time only if the first borrowing has been repaid. Each borrowing must be repaid within three years, with interest. For Fremont, 8% of our property taxes (including the "triple-flip" sales tax replacement) is \$5.5 million. The 8% amount is actually measured at the county level, and may be distributed among local agencies in any manner, so long as the total 8% at the countywide level is remitted to the State. That allocation methodology is not yet known. As a result, Fremont's share could actually be more or less than 8%.

State constitutional provisions and State laws approved by the voters limit the State's budget flexibility in solving structural deficits. Voters have "locked in" an increasing share of budgeted expenditures without increasing revenues. Such voter-approved funding commitments are often contradictory but, even worse, they reduce the State's flexibility needed to deal with changing budget circumstances. All of these factors, combined with the need for a two-thirds vote in each house of the Legislature to approve a budget, make it especially difficult for the Governor and the Legislature to reach agreement on the State's budget.

Operational Impacts and Challenges: As the depth and nature of the current crisis have become clearer, it is evident that the City must significantly reevaluate the services provided to the community. City services are provided by employees, and financial instability impacts City staff. Several years ago, the City cut costs by more than 25% and reduced staff by more than 220 people (144.78 fulltime

equivalent positions [FTEs] held by 165 people, plus 59 temporary staff). These severe reductions in FY 2002/03 created critical public safety and maintenance issues and have hampered our ability to provide optimal administrative support to frontline operations.

The recent economic downturn (the result of the credit market and sub-prime mortgage crises shaking the entire country) and concern about how the State will deal with its own budget gap mean that we do not currently have the resources to staff all of our remaining authorized positions throughout the City. Eleven vacant positions in several departments were frozen in FY 2007/08, and funding for those positions was not included in the FY 2008/09 budget. Those positions have now been permanently eliminated in the FY 2009/10 budget because the likelihood of ever having sufficient funding to fill those positions is extremely remote. In addition, all departments were directed to reduce their budgets by 1% in December 2007, and that savings target is carried forward and made permanent in the proposed appropriations for FY 2009/10.

As the global financial crisis unfolded in FY 2008/09, it also became increasingly apparent that more drastic budget reductions would be needed in order to live within our means. To that end, public safety departments were asked to reduce their budgets by 5% and all other departments were asked to make 10% reductions. Because of declining development activity, Community Development took a reduction of 20% in costs funded by developer fees. We will continue to closely monitor development and permit activity to determine if further reductions are needed.

These budget reductions result in staffing changes in the organization in FY 2009/10. The total authorized staffing Citywide is decreasing from 919.975 fulltime equivalent positions (FTEs) in FY 2008/09 to 846.00 FTEs in FY 2009/10, a decrease of 73.975 FTEs (8%), in addition to the elimination of 29 temporary staff. These position reductions affect all City departments. Although these actions are necessary to help balance the budget, staffing levels for the most basic services – public safety and maintenance – are at their lowest level in at least 18 years when viewed in relation to Fremont’s population. The total City workforce now consists of 3.9 FTEs per 1,000 residents.

This level of budget reductions will have a noticeable impact on the community. There are some services that we simply will not be able to provide. Following is a summary of the more significant reduction impacts:

Police: The Police Department is eliminating ten vacant police officer positions and one vacant police captain position, in addition to several non-sworn positions. This means that most shifts will be staffed at safety minimums, rather than service minimums. The community will experience delays in responses to less critical crimes, such as theft or drug- and alcohol-related crimes. To meet the budget reduction target, the Police Department front desk and lobby will now only be open between 8:00 a.m. and 5:00 p.m. Monday through Friday (they are currently open 24 hours a day, 7 days a week). However, there will be a telephone outside the front door with direct access to the Dispatch Center in case of emergency. The Citizen’s Ride-along Program and National Night Out will be significantly scaled back (and, perhaps, eliminated). In addition, the Street Crimes Unit may be suspended, which will result in significant reductions in proactive arrests and the ability to address crime trends.

Fire: The Fire Department is eliminating nine vacant firefighter positions and reducing overtime by scheduling rotating fire station closures (“rolling brownouts”), which means closing stations on days

when certain criteria are met so as to not pay overtime to staff vacancies. The station closures will increase response times for fire and emergency medical calls, resulting in the possibility of larger fires and poor outcomes on medical aid calls.

Community Development: The Community Development Department uses temporary employees to flex and adjust as building activity increases or falls off, thus allowing a core staffing level to be in place at all times. However, over the last year the department has seen a significant decline in permit activities, and it may take years for development activity to recover and resume at any appreciable level. To deal with this decreased service demand, both temporary and regular positions will be eliminated. These staff reductions may result in slower response times to customer requests. For example, the department will no longer have the capacity to provide back-up services for fire inspections.

Transportation and Operations: As a result of significant staff reductions in the Maintenance Division, the community will experience an increase in the deterioration of road conditions, increased illegal dumping and graffiti sightings, more unsightly and worn median landscaping, and overgrown street trees. Medians and trees throughout the community will be noticeably affected. One of the four median maintenance crews and the entire Program Pruning operation for street trees is being eliminated. As a result, property owners will be required to take on the responsibility of maintaining street trees in accordance with City policies. This transfer of responsibility may require the adoption of a new tree policy and ordinance by the City Council. Tree and median crews will continue to provide safety pruning of trees and median landscaping. Because of staff reductions in Building Maintenance, staff will only be able to respond to safety, security and emergency requests. Preventative maintenance, such as gutter cleaning and aging facility preservation work, as well as other non-urgent requests, will be delayed or not responded to at all.

The Transportation Engineering Division will no longer respond to all traffic-related service requests from the public. Instead, they will now respond only to safety-related and legal obligation requests. This approach means that requests for additional signage, crosswalks, and restricted parking will be delayed until the higher priority requests are completed.

Parks and Recreation: The community will be affected in a variety of ways by the reduction in staffing in the Park Maintenance Division. Maintenance at Central Park will be significantly reduced, the temporary skate park will not open, lawn edging and leaf blowing cycles will be extended, and trash and litter pick-up schedules will be reduced, potentially resulting in overflowing trash cans and increased citizen complaints. Park equipment repairs will be less timely, and irrigation maintenance will only be conducted when actual breaks occur, rather than proactively, which may result in increased water usage and loss of plant material.

In the Recreation Division, scholarships for 139 fewer low-income families for the summer playground program will be distributed.

Human Services: Because of the increased need for Human Services programs during these difficult times, some General Fund costs will be shifted to grant funding sources. Contractual services for database-related work will be transferred to in-house Information Technology Services (ITS) staff rather than using outside consultants. This will mean an increased workload for ITS staff and may result in delays in ITS services to other departments, as well.

Economic Development: Much of the work in Economic Development is done using contractors and consultants, so budget reductions are achieved by reducing these contracts. For example, the contract for retail development services will be reduced to specific project work only, resulting in less retail recruitment, attraction, and expansion efforts. In addition, major economic development study and marketing materials will now be completed every other year, rather than annually.

General Government: General Government consists of the City Attorney's Office, the City Clerk's Office, the City Manager's Office, the Finance Department, the Human Resources Department, and the Information Technology Services Department, and represents 8.2% of the total General Fund budget. A 10% reduction in all of these operations means delays in providing support services to the line departments, delays in responding to requests from the community, some reduction in capacity to collect certain revenues, a loss of institutional knowledge, decreased systems reliability, and increased vulnerability to internal control and computing infrastructure threats.

Besides the operational impacts described above, another budget challenge is the increasing cost of maintaining Fremont's infrastructure, primarily due to three factors. First, as Fremont ages, so does its public infrastructure. The majority of Fremont's public infrastructure was constructed many years ago and now requires either an increased level or frequency of repairs, compounded by not having had adequate resources to spend on street maintenance in the past. Second, as Fremont continues to grow, additional infrastructure is added that must be maintained, further stretching the City's limited maintenance resources. Finally, new requirements result in increased costs. Some of these requirements are voluntary, such as the City's continued move toward greater sustainability. Although sustainability programs such as improved energy efficiency will eventually save money and reduce greenhouse gas emissions, in the near term there are increased transitional costs. Other maintenance requirements, which are regulatory in nature, have increased dramatically over the last few years, and have added significant costs to City operations. In addition to new storm water requirements, the City must comply with new regulations that compel reducing emissions from our fleet (resulting in a diesel engine retrofit program and new hazardous materials controls) and that restrict the type of paint that can be used for pavement signing and striping (resulting in the need to repaint all traffic signs and stripes more frequently).

Major City Initiatives: Although the City's current economic climate is grim, affecting the breadth and depth of services offered to the community, there are many important initiatives currently underway. These initiatives are important investments in the community's future and position the City well for long-term growth and stability. Notwithstanding the impacts of budget reductions, City staff must continue to do its best to move these important initiatives forward.

Development: There are a number of significant development projects and initiatives underway. These are all important elements of our sales tax diversification strategy.

Capitol Avenue/Midtown District: The Capitol Avenue/Midtown District project is a "Main Street" style pedestrian-oriented mixed-use development focused in the area bounded by Fremont Boulevard, Mowry Avenue, Paseo Padre Parkway, and Walnut Avenue. In August 2008, the City entered into a Memorandum of Understanding (MOU) with TMG Partners for planning and development. Staff is currently working with TMG Partners on the development of a Specific Plan/Precise Plan for the Midtown District and associated environmental review. When completed, these documents will provide

certainty for developers as to the type of project that can be developed and will help expedite the approval process, saving both time and money.

Retail Centers: Pacific Commons is an 880,000 square-foot retail center located at I-880 and Auto Mall Parkway. It is anticipated that re-tenanting of existing vacant spaces and a potential proposal to expand the Center will be the focus of attention in FY 2009/10.

Creekside Landing is a proposed 400,000 square-foot regional shopping center located at I-880 and Dixon Landing Road. The Center is in the final stages of planning review and approval. The upcoming fiscal year will be focused on physical construction and ongoing efforts at retail recruitment, prior to the Center's anticipated opening in the fall of 2010.

Emerging Technology: Fremont's biotech and medical device industry cluster continues to grow. In addition to improvements made at Amgen's facility, several small to mid-size life science firms have recently located in Fremont, and staff continues to meet with potential businesses and market local sites. Fremont is also developing a "clean and green" technology cluster that we are actively seeking to expand and promote. The establishment of these various technology clusters promotes business-to-business opportunities, helping both the local businesses and the City's sales tax revenues.

Local Business Stimulus Package: In March 2009, the City Council approved a number of measures as part of a Local Business Stimulus Package designed to help existing Fremont businesses and provide incentives to continue to attract new businesses to Fremont during these difficult economic times. The measures in the Local Business Stimulus Package include the following:

- Reduce Development Impact Fees citywide by 10% until December 31, 2011 by collecting 90% of the fee during this time.
- Reduce Development Impact Fees by 25% within the Central Business District (CBD) until December 31, 2011 by collecting 75% of the fee during this time.
- Change the current practice of collecting Development Impact Fees at time of building permit issuance to collecting fees prior to final inspection or granting of Certificate of Occupancy.
- Exempt clean technology firms from the Business License Tax for a number of years (still to be determined).
- Increase the local business purchasing preference from 2.5% to 5% until December 31, 2010.
- Authorize the City to participate in the Statewide Community Infrastructure Program in order to offer developers an alternative financing program to pay Development Impact Fees.
- Assist qualifying local businesses with creating a Foreign Trade Zone.

In addition, there are a number of other ongoing Economic Development, Redevelopment Agency, and Planning Division activities that will be retooled and/or introduced in the upcoming year as part of the City's concerted effort to provide additional assistance for local businesses. These activities include the following:

- The City's "Shop Fremont" campaign
- Business workshops offered through the Alameda County Small Business Development Center
- The Redevelopment Agency's Commercial Rehabilitation Program

- Partnering with local educational institutions and employment agencies to promote job training and employment resources
- Providing additional promotion of Employment Training Panel funds and Industrial Development Bonds for qualifying businesses
- Updating the Sign Ordinance to allow more leeway and flexibility for businesses to market and promote themselves

Federal Economic Stimulus: President Barack Obama signed the \$787 billion American Recovery and Reinvestment Act (ARRA) of 2009 into law on February 17, 2009. The American Recovery and Reinvestment Act of 2009 is also commonly known as the Federal Stimulus Package. The main objectives of the Federal Stimulus Package are to create jobs and stabilize the economy. ARRA funding is targeted to programs in the areas of health care, energy, infrastructure, education, public safety, transportation, environment, affordable housing, and economic development. In some cases, funding guidelines have been established, and in other cases the guidelines are still being developed.

Staff is actively tracking the status of ARRA implementation and assessing which funding sources are appropriate for Fremont. Generally, funding may be accessed through state and regional agencies (e.g., CalTrans, Metropolitan Transportation Commission), through formula programs administered by federal agencies (e.g., Housing and Urban Development), or through discretionary grant programs administered by federal agencies (e.g., Department of Justice). In some cases, funding is available by formula, and in other cases funding is provided through a competitive process.

At this time, staff believes Fremont may receive approximately \$9.23 million in ARRA funding, the largest portion of which is \$4.01 million in new funding for street overlays. This infusion of cash will increase total funding for street overlays to \$7.4 million for FY 2008/09. Other significant opportunities include additional CDBG funds, which may be used for capital needs and social services; funding for affordable housing through the Neighborhood Stabilization Program; funding for homelessness prevention; competitive grants to fund police officers (COPS funding); funding for police equipment; and funding for storage buildings at Fire Stations 6 and 11.

In addition to the City applying directly for ARRA funds, there are a number of grants available to businesses that the Office of Economic Development is tracking. Economic Development staff are marketing these funding opportunities to Fremont businesses and working with individual businesses, as appropriate, to ensure they receive their fair share of stimulus funds. Some of the funding opportunities include the following:

- \$636 million for Small Business Administration (SBA) loan programs, including \$30 million for expanding SBA's Microloan program and offering SBA loans of up to \$35,000 for small businesses facing economic hardship.
- \$6 billion from the Innovative Loan Guarantee Program through the U.S. Department of Energy.
- \$3.95 billion for Workforce Investment Act Programs for employee training and development through the U.S. Department of Labor.

General Plan Update: State law requires cities to adopt a comprehensive General Plan, which serves as the "constitution" for all future development decisions in the community. In FY 2007/08, the City began working on an update to its General Plan, which was last comprehensively rewritten in 1991. As part of

that effort, staff sought extensive community input, completed several technical studies, and held a series of study sessions with the City Council and the Planning Commission on land use policy issues. In FY 2009/10, the Planning Commission and City Council will continue to provide policy direction and establish the vision for the City's future, and staff will use that information in drafting the General Plan, for consideration and final adoption by the City Council toward the end of the fiscal year.

Redevelopment: Several exciting redevelopment projects are underway. All of these projects will help to revitalize the Redevelopment Project Areas and bring new revenue into Fremont.

Centerville: One of the largest projects underway in the Centerville district is the Agency-owned Centerville Unified Site, located on a 6.6-acre site along Fremont Boulevard near Thornton Avenue. This year the Agency anticipates selecting a developer for the site, negotiating a disposition and development agreement, and commencing the entitlement process for a new development. This development will be a public/private partnership between the selected developer and the Redevelopment Agency, focused on creating a mix of uses and featuring architectural design consistent with the character of Centerville.

Irvington: The Washington Boulevard and Paseo Padre Parkway Grade Separation is the largest redevelopment project in the Irvington district. This \$111 million project, which will build an overpass on Washington Boulevard and an underpass on Paseo Padre Parkway to separate car, bicycle, and pedestrian traffic from railroad crossings, is described in detail in the Capital Projects section of this overview.

The Bay Street Streetscape and Parking Project is one of the cornerstones for Irvington's revitalization. The project was initiated to transform the street environment for this three-block stretch of Bay Street to support existing, and create new, commercial and residential mixed uses, as well as to encourage other public and private investments in and around the Five Corners area in Irvington. Construction of the parking lot was completed in spring 2008. Utility undergrounding, followed by streetscape improvements, will be completed in 2009.

The Grimmer Greenbelt Gateway project contemplates creating a meandering landscaped pedestrian and bicycle path from Fremont Boulevard across Paseo Padre Parkway to Central Park. Development of the preliminary design, cost estimates, and a construction phasing plan will occur in FY 2009/10.

Niles: The 138-acre Niles Redevelopment Project Area is located at the western edge of Niles Canyon, near the intersection of Niles and Mission Boulevards. For the past several years, staff has been working with the community on the development of the Niles Town Plaza. Located on the north side of Niles Boulevard on an approximately two-acre portion of the former Union Pacific (UP) Railyard Property, at H and I Streets, the \$7.25 million Town Plaza will consist of landscape improvements, a fountain, an amphitheater and stage area, and two rehabilitated historic railroad buildings. Environmental remediation of the property is complete and construction is underway, with a scheduled completion date of fall 2009. Once development is complete, the plaza will act as an anchor for what is anticipated to be a two-story main street-style development on the remainder of the former UP property and two abutting City-owned parking lots. The ultimate build-out of this project will transform Niles Boulevard into a more typical two-sided commercial street.

In conjunction with the redevelopment of the former UP property and its environs, the Redevelopment Agency will continue the design and development of a pedestrian link connecting the former UP property and Niles historic commercial core to the more visible Niles Canyon Railway passenger boarding/disembarkation platform and Mission Boulevard. The first step in this project is to identify the optimal location and type (e.g., pedestrian bridge, at-grade railroad crossing) of connection and determine the cost of construction.

Proposed Plan Amendment: The primary source of funding for the Redevelopment Agency is tax increment generated from the Industrial Redevelopment Project Area. It is now estimated that the current \$400 million cap on the receipt of Industrial Area tax increment will not be sufficient to provide the needed funding for the projects identified in the 1998 plan amendment. Current estimates indicate that the existing \$400 million cap will be reached in FY 2011/12.

In July 2007, staff began working on a plan amendment to increase the tax increment revenue cap. It is anticipated the plan amendment process will be completed by the end of 2009. The successful completion of the plan amendment process will increase the resources available to the Agency for both housing and non-housing activities.

Capital Projects: Despite the challenges in the City's General Fund, we continue to work on a variety of major capital projects. These projects can proceed because, for the most part, they do not rely on the City's General Fund. Rather, their funding comes from such sources as redevelopment tax increment, traffic impact fees, State and regional sources, and the Fire Safety Bond (Measure R) approved by Fremont voters in 2002.

Grade Separation Project: The \$111 million Washington Boulevard/Paseo Padre Parkway Grade Separation Project in the Irvington District is the largest public works project undertaken in the City's history. The project includes building an overpass on Washington Boulevard between Bruce Drive and Roberts Avenue and an underpass on Paseo Padre Parkway between Shadowbrooke Common and Hancock Drive to separate car, bicycle, and pedestrian traffic from railroad crossings. The project also includes the relocation of about 1.5 miles of the active Union Pacific (UP) railroad tracks up to 500 feet to the east of where they are now in the area between Paseo Padre Parkway and Washington Boulevard.

The Grade Separation Project will benefit Fremont in a number of ways. First, it will facilitate the future BART extension to Warm Springs and San Jose by allowing the BART trains to travel at-grade once they emerge from underneath Central Park and Lake Elizabeth. Keeping trains at-grade is both less expensive for BART and less disruptive for residents and businesses near the BART tracks. Second, the project will improve safety, reduce traffic delays, and eliminate the need for freight trains to sound their horns when approaching and crossing Washington Boulevard, High Street, Main Street and Paseo Padre Parkway (the train crossings at High and Main Streets have been eliminated by the relocation of the UP tracks). In turn, eliminating traffic backups at train crossings will help reduce cut-through traffic on neighborhood streets and improve safety in the area by separating pedestrians, bicycles and vehicles from the railroad tracks.

The City has committed \$42.8 million in redevelopment funds and traffic impact fees to the project. The remaining \$68 million has been secured from State and regional sources like the State Grade Separation account, Alameda County Congestion Management Agency (CMA), bridge tolls, the County's Measure

B half-cent sales tax, and a partnership with BART to bring in State Traffic Congestion Relief funds. The \$48.1 million main construction contract was awarded in March 2007, and construction began in May 2007. Construction had been scheduled to last until late 2010 or early 2011. However, construction is now more than 75% complete and the contractor is projecting a completion date of late 2009, a year ahead of schedule, and within budget.

Pavement Overlay Project: This summer, the City of Fremont will use \$4.01 million of American Recovery and Reinvestment Act (ARRA) funds, supplemented with \$800,000 of additional funding, to rehabilitate 13 street segments of arterials and collectors, for a total length of 4.3 road miles. The work will involve repairing failed areas, grinding existing pavement and overlaying with asphalt concrete, constructing new curb ramps, installing bike lanes, and replacing signing and striping. This project will restore the worn pavement to full serviceability by correcting the unavoidable deterioration of pavement caused by age, truck traffic, sunlight, rain and irrigation. The City of Fremont is working in partnership with the Alameda County Congestion Management Agency (ACCMA) and CalTrans to ensure that this project meets all the requirements of the ARRA funding. Construction plans for the project are complete and the City expects to receive final funding approval in May 2009. The estimated construction cost for this project is \$7.2 million. The remaining cost for the project will be funded through road construction specific funding sources.

Fire Safety Bond Projects: In November 2002, Fremont voters approved Measure R by 74.4%, thereby authorizing the City to issue \$51 million in general obligation bonds, to be repaid by a property tax levy. Proceeds from these bonds are to be used to replace three fire stations, build public safety training facilities, and make remodeling and seismic improvements to seven existing fire stations. To date, all \$51 million in bonds has been issued, and new Station 8 in North Fremont and Station 6 in Centerville have been completed. New Station 2 in Niles is currently under construction and is approximately 55% complete. In addition to Fire Safety Bond proceeds, \$1.5 million in redevelopment funds has been allocated to Station 2 so that it can be relocated from its existing site on Second Street near H Street to a site at the corner of Niles Boulevard and G Street, as a means of helping revitalize the Niles Redevelopment Project Area.

Of the stations being remodeled, six are complete (Station 1 in the Central Business District, Station 4 at Pine Street and Paseo Padre Parkway, Station 5 in Warm Springs, Station 7 at Grimmer Boulevard and Auto Mall Parkway, Station 9 at Stevenson Place, and Station 10 in Ardenwood). The remodel of Station 3 in Irvington, which will be the last fire station project, is planned to commence later this year. The public safety training facilities consist of a Police firing range, Fire training classrooms, and a Fire tactical training facility. The Fire training classrooms, which were part of the Building A Fire Administration project (funded with non-fire bond money), were completed in April 2009. The Police firing range began construction in April and is scheduled to be complete in early 2010. The Fire tactical training facility began construction in May 2009 and is scheduled to be completed in May 2010.

Fire Station 11: After closing a temporary station in 2003 and putting plans for building a permanent station on hold, we are once again able to move forward with opening this fire station in the Industrial Area, west of I-880. This area had previously been served by fire stations on the other side of the freeway. As this area continues to grow and develop, having a fire station in closer proximity becomes increasingly important. The temporary station opened in June 2008, and is staffed by firefighters funded, in part, by a \$1 million SAFER grant from the U.S. Department of Homeland Security. Construction of

the permanent fire station is being funded by certificates of participation (COPs) that were issued in the fall of 2008. Construction is scheduled to be complete by the end of 2010.

Aqua Adventure Waterpark: The new family waterpark in Central Park, “Aqua Adventure,” opened on schedule on May 23, 2009. This facility replaces the old swim lagoon and is a significant investment for the community. It was made possible with a combination of funding sources, including State Propositions 12 and 40, significant grants from The Candle Lighters and Fremont Bank Foundation, and resources from the City’s Recreation Cost Center. No General Fund money has been expended on this project, and it is anticipated the waterpark will be self-supporting. This is a significant addition to the menu of recreation opportunities for the community.

Conclusion: Like all California cities, Fremont continues to be faced with the challenge of finding new ways to maximize service delivery to the community even as we are faced with the need to reduce costs in an uncertain economy. We are fortunate that people here care deeply about their community and local leaders are committed to ensuring Fremont’s bright future. They want to help, they want to participate, they want to maintain Fremont as a safe place in which to raise their families, and they want to leave a legacy for future generations. Our role as an organization is to continue to find effective ways to work with our residents and business community to ensure that Fremont remains a special place where people want to live, work, and play now and in the future.

ENCLOSURE: None

RECOMMENDATIONS:

1. Hold a public hearing.
2. Provide direction as needed on issues pertaining to the FY 2009/10 proposed operating budget.

7.2 PUBLIC HEARING ON FY 2009/10 - 2013/14 CIP

First Public Hearing and Council Direction to Staff on the proposed FY 2009/10 - 2013/14 Capital Improvement Program (CIP)

Contact Person:

| | | |
|---------|-----------------------|-----------------------|
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Executive Summary: The development of the FY2009/10 – 2013/14 CIP began in September 2008. The City Council has thus far held three meetings, including one work session, to review the results of the process that created the list of projects proposed for funding during the five-year period of this plan. The City Council last reviewed the CIP on April 7, 2009. This report highlights several changes in the project list since that meeting. The draft CIP plan identifies the funding that projects will receive in each year of the plan as well as the unfunded capital projects. The purpose of this first public hearing is to receive any additional comments on the proposed CIP.

BACKGROUND: The purpose of the five-year CIP is to translate capital improvement and asset maintenance policies of the City Council into specific projects. Every two years, staff embarks on a significant effort to produce the CIP. On December 16, 2008, the City Council held a work session at which staff described this year's CIP development process. The City Council reviewed its project prioritization policy at that meeting to ensure it continued to reflect the importance of maintaining the City's assets as part of the CIP. The two highest priorities for the City Council are to complete projects that 1) maintain or repair assets so as to reduce potential safety risks, and 2) increase or maintain the expected life of an asset.

At the January 27, 2009 meeting, staff described the range of capital projects submitted for consideration, reviewed the preliminary status of the process, identified funding issues, and presented the preliminary ranking of projects. Following the January 27, 2009 meeting, staff proceeded to further cost and scope projects and prioritized the timing of projects in the proposed plan. At the April 7, 2009 meeting, the City Council received the final project listing, along with the funding timeline for each project. On May 14, 2009, the Planning Commission reviewed the CIP for the purpose of evaluating and ensuring project compliance with the General Plan, as required by State law. Following this public hearing, the City Council will consider formal adoption of the FY 2009/10 – 2013/14 CIP at a second public hearing scheduled for June 9, 2009.

Scheduling Proposed CIP Project Costs over Five Years: As part of the CIP development process, staff conducted an analysis to determine the appropriate project implementation schedules. To distribute project costs over the five years of available funding, staff reviewed each project and applied consistent criteria for timing decisions. The criteria included:

- Revenue streams
- Project cost

- Maintenance impacts
- Priority ranking
- Staff workload

Considering these criteria, staff developed the enclosed schedule for CIP projects.

Changes Since April 7 City Council Meeting: Staff incorporated several changes into the CIP document since the last City Council meeting on this topic in April 2009. This section outlines those changes.

1. *Projects Moved from Committed/Restricted Fund Group to the Capital Improvement Fund 501 (Unrestricted):* As part of each capital plan, there are several projects listed on the Capital Improvement Fund project list that receive their funding from other City funds. During the development of this CIP, a few such projects were presented to the Council as Committed/Restricted Fund Group projects because all or parts of their funding came from outside the main group of capital funds. However, the funding for these projects will ultimately be received out of the Capital Improvement Fund 501. As part of the CIP adoption process, the City Council must authorize the transfer of these funds into the Capital Improvement Fund 501. These transfers will be included as recommendations in the June 9, 2009 Council agenda staff report. This year, staff is recommending that the following projects receive funding through transfers to the Capital Improvement Fund:

- a) General Plan Update - \$225,000 transfer in FY2009/10 from Fund 012 (Community Development Cost Center Fund Balance) to Fund 501.
- b) Historic Inventory - \$25,000 transfer for the first two years of the five year plan from Fund 012 (Community Development Cost Center Fund Balance) to Fund 501.
- c) Address Assignment and Parcel Update - \$200,000 transfer in FY2009/10 from Information Technology Systems Fund 620 to Fund 501.

CIP Funding Sources:

Capital Improvement Fund 501 (Unrestricted): This CIP fund, formerly identified as General Fund 501, is unrestricted and can be used for any capital project designated by the City Council. This portion of the CIP budget draws funding from a variety of sources, including the City's General Fund, interest earnings, unappropriated fund balance, fund transfers and proceeds from unexpended funds from project closeouts. Staff estimates that this fund will have approximately \$19 million available over the next five years for capital projects. This includes \$4.9 million in beginning fund balance, much of which is comprised of Local Improvement District surplus funds, interest earnings, and previous closeouts of CIP projects back to fund balance, \$2.8 million in Local Improvement District surplus funds over the five year period, \$7.5 million in transfers in from the General Fund, and \$3.45 million in interest earnings. Of the City's contribution from the General Fund, \$4.5 million is programmed over the five years of the plan toward the development of the City's Downtown/Midtown Project. Outside of \$1.5 million for the Downtown/Midtown Project, no General Fund contributions are proposed in the first two years of the CIP for other capital projects.

Gas Tax Fund Group: Revenue in this fund group comes from the City's share of the State-collected gasoline taxes and funds from the Measure B half-cent sales tax for transportation-related expenditures.

The City can only use these funds for street maintenance and other transportation improvement projects. Staff estimates that this fund group will have approximately \$38.7 million available over the next five years for capital projects. This includes over \$37.2 million in new revenues and \$1.4 million in interest earnings. The total funds available in the gas tax group are down approximately \$7 million and continue to not adequately meet Fremont's roads and infrastructure needs. Additionally, the fact that gasoline taxes are not indexed to inflation and have not seen a rate increase since 1991 severely hampers the ability of revenues to keep up with annual project and operating cost increases.

Traffic Impact Fee (TIF): This fund group accounts for monies received from developers to mitigate impacts on the City's transportation networks resulting from new development. The funds reflect new development's share of the cost of street improvements, interchanges, and other traffic infrastructure improvements. The City Council sets the fee amounts to be charged on all new development within the City on a dollar per dwelling unit or dollar per square foot basis. Over the next five years, staff estimates that the total available resources for this fund group will be \$9.9 million. Staff based these estimates on projected residential and non-residential construction activity and interest earnings over the next five years. Year to year, the traffic impact fee fund amount available is variable based on development activity.

Bike & Pedestrian Fund Group: This fund group accounts for Alameda County Measure B funds dedicated to bicycle and pedestrian projects only. The City can only use these funds for transportation improvement projects that positively impact the flow of bicycle and pedestrian traffic throughout the City. Staff estimates that this fund group will have approximately \$2.8 million available over the next five years for capital projects. This includes \$2.45 million in new revenues, \$204,000 in estimated beginning fund balance, and \$150,000 in interest earnings.

Park Development Impact Fees: This fund group accounts for monies received from developers to mitigate impacts on the parks system resulting from new development and population growth. The City Council sets the fee amounts to be charged on all new residential development within the City on a per dwelling unit basis. According to State law, these funds can only be used to expand existing parks or to develop newly acquired parkland. This fund group is expected to have approximately \$14.6 million available over the five year CIP period. The funds available include \$7.6 million in beginning fund balances, \$4.7 million in revenues via collected fees, and \$2.4 million in interest earnings. Staff based these revenue estimates on projected residential construction activity and interest earnings over the next five years.

Park Dedication In-Lieu Fees: This fund group accounts for monies received from developers to acquire additional parkland within the City. The City Council sets the fee amounts to be charged on all new residential development within the City on a per dwelling unit basis. Based on staff estimates, this fund will have approximately \$24.5 million available over the five-year CIP period to acquire parkland. Beginning fund balance comprises \$17.7 million of this amount while new fees and interest earnings generate \$5.3 million and \$1.5 million, respectively. This plan does not include appropriations for acquisition of any specific projects or potential park sites during the next five years. The City will hold the funds in an account until an appropriate site for acquisition is found. Whenever desirable sites are available for acquisition, staff will return to the City Council for approval and appropriation authority. Staff based these revenue estimates on projected residential construction activity and interest earnings over the next five years.

Redevelopment Agency Fund Group: This fund group includes revenue available from the City's Redevelopment Agency to pay for its capital projects. The major sources of revenues in this fund group are from property tax increment and proceeds from the issuance of tax allocation bonds issued by the Redevelopment Agency. Staff estimates this fund group will have approximately \$32.1 million in available capital resources over the five-year CIP period.

Committed/Restricted Funds: This fund group accounts for funds that the City projects to receive from State, federal and other agencies to fully or partially fund specific capital projects. It also lists internal restricted City funds available for specified purposes within the plan. Estimates of the total funding programmed to projects in this group are at \$7.3 million. Some of the funds available in this group include the Urban Runoff Clean Water funds for water quality improvement projects and funds from the Family Resource Center for significant maintenance projects. These outside funding sources help to relieve the pressure on other available CIP funding sources.

Debt Funds: This fund group accounts for debt proceeds for construction of various capital facilities and major equipment purchases approved as a part of the CIP. Debt in the amount of \$12 million is proposed to be issued for one project, the seismic retrofit of the Police Building, in this CIP. The issuance of debt will be in accordance with the Council-adopted long-term capital debt policy, and repayment of the debt will be funded by the General Fund.

Underfunded CIP Projects:

Pavement: Staff proposes funding street overlays in this five-year CIP in the amount of \$14.25 million from the gas tax fund group. The street overlay project will also receive approximately \$4.7 million in federal economic stimulus package funding. Despite the infusion of federal funds to supplement the available gas tax funds, the City's pavement condition needs will not be met. According to a 2007 survey by Nichols Consulting, the City would need to contribute \$65 million over five years simply to maintain the existing pavement conditions. The proposed funding for street overlays over the five year CIP period falls far short of this amount and will result in further deterioration of the City's pavement conditions.

Sidewalks: In the FY2001/02 – 2005/06 CIP, staff estimated the total of sidewalk repair needs to be approximately \$10 million. Since that estimate, the City's capital plans have only programmed \$4.1 million in funding towards sidewalks, and have only been able to focus on the highest priority repairs. Due to the limited availability of funds, this CIP proposes a contribution of \$200,000 over the first two years of the plan for these high priority repairs. This results in underfunded needs of approximately \$5.7 million, not including new needs that have arisen over the past eight years.

Unfunded Needs: The proposed FY 2009/10 – 2013/14 CIP presents a substantial list of unfunded project needs. Of course, this list does not reflect all of the unfunded needs within the City. Staff was aware of the funding challenges in this plan and, accordingly, submitted a list of projects that balanced the amount of funds available with making a meaningful, but limited, impact on the needed capital improvements and deferred maintenance. Some of the major unfunded needs include the following (costs are general estimates and are not necessarily based on fully scoped projects):

Transportation/Street Infrastructure

- Street overlays - \$50 million
- Intersection improvements - \$7 million
- Road widenings - \$11.8 million
- Sidewalk improvements - \$1.6 million
- Median repairs - \$10 million

Park Development/Maintenance

- California Nursery Historic Park - \$16 million
- Central Park, East Meadow - \$15.5 million
- Mission San Jose Community Park Development - \$2.2 million

General Government/New City Facilities

- Central Park Teen Center Remodel - \$1.2 million

Public Safety

- Police Parking Lot Expansion - \$600,000
- Critical Incident Van - \$550,000

Staff estimates the total cost of unfunded projects considered in this CIP cycle to be approximately \$155 million, which is clearly beyond the City's available or projected financial resources. Staff has continued to first focus attention on existing State and local funding sources, which are declining and constrained, and will continue to search for other sources and mechanisms for meeting some of the unfunded needs outlined in this plan. One such source is federal stimulus funds available through the American Recovery and Reinvestment Act (ARRA). The timing of ARRA funding opportunities do not match the CIP funding cycle, so each opportunity will be pursued separately from the CIP.

ENCLOSURE: [Draft FY 2009/10 – 2013/14 Proposed CIP](#)

RECOMMENDATIONS:

1. Hold a public hearing.
2. Receive and consider all capital improvement projects proposed for the Five-Year FY2009/10-2013/14 CIP.
3. Provide direction as needed on the FY2009/10-2013/14 proposed CIP, for consideration on June 9, 2009.

7.3 APPEAL FROM APPROVAL OF FARWELL MEDICAL OFFICE BUILDING— FARWELL DRIVE—PLN2009-00123

Public Hearing (Published Notice) to Consider a Third-Party Appeal from Planning Commission Approval of a Planned District Minor Amendment for Site Plan and Architectural Review, a Planned Unit Development Rescission, and a Finding for Floor Area Ratio Increase for a New Two-Story 32,600 Square Foot Medical Office Building on a Currently Vacant and Unaddressed Parcel

Contact Person:

| | | |
|---------|-----------------------|-----------------------|
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Executive Summary: The Planning Commission's approval for the construction of a new 32,600 square-foot two-story medical office building on a vacant parcel in the Mowry East Shopping Center is being challenged by an adjacent property owner within the Shopping Center. The primary issue raised by the appellant is parking: the applicant proposes to meet the Zoning Code parking requirement in part with off-site parking located in the Shopping Center common area; the appellant, who owns an adjacent parcel in the shopping center that contains a portion of the common area parking, objects to the applicant using the parking unless a private agreement between the applicant and the appellant is first reached. Because the precise plan for the Shopping Center's Planned District was approved based on integrated circulation and parking area for all parcels, including the applicant's, and because the Shopping Center common area has enough parking capacity to absorb the additional 58 spaces needed for the project, staff recommends the City Council deny the appeal and approve the project.

BACKGROUND: The project is located within the existing Mowry East Shopping Center located along the south side of Mowry Avenue between Farwell Drive and Blacow Road. The Shopping Center consists of 6 commercially-developed parcels and one undeveloped parcel located in the back corner of the Center off Farwell Drive. The Shopping Center was originally approved by Planned District P-67-2 in 1968 as part of a mixed commercial and residential project. The "Los Arboles I & II" proposal included, as phase one, a commercial project along Mowry Avenue that was part of Planned Unit Development PUD-71-2, and as phase two, an apartment project along the southeast side of the property, contemplated under PUD-72-5. By 1978, the owner had scrapped the residential development envisioned by PUD 72-5 and received approval from the City Council for a precise site plan amendment to P-67-2 to allow the enlargement of the Shopping Center area, effecting conversion of the Planned District to an all-commercial project. PUD 72-5 (the residential plan), however, was never formally rescinded, an apparent oversight at the time. The City has since approved the addition to the Shopping Center of an Orchard Supply Hardware store in 1980 and a Wendy's drive-through restaurant in 1985 (P-67-2C). Other uses within this commercial block include a bank, auto repair shop, grocery stores, restaurants, and other miscellaneous retail and service uses. The proposed project would develop the last vacant parcel within the Mowry East Shopping Center.

When the Shopping Center was approved in the 1960s, no health services were permitted within the zoning district upon which Planned District P-67-2 was based. The General Plan designation has since been changed to Community Commercial, and the comparable zoning district of the same name allows health services as a principally permitted use per FMC 8-21101(b)(19). On March 2, 1995, the Community Development Director approved Planned District Minor Amendment P-67-2K, which allowed “offices and clinics of doctors of medicine, dentists, doctors of osteopathy and other health practitioners” as permitted uses on and near the subject site. There has been a dentist’s office in the shopping center since 1995. The proposed tenants would fall within the range of medical office uses otherwise permitted within Planned District P-67-2. The underlying configuration of parcels and ownership in the Shopping Center has changed over time, but the overall zoning approval that treats the site as an integrated Shopping Center with shared access, circulation and parking obligations has not changed. In 1978 the current owners of the existing underlying parcels entered into a Reciprocal Easement Agreement (REA) which memorialized these obligations. (attached as Informational Enclosure 2).

Project Description: The applicant proposes to construct a two-story, 32,600-square-foot medical office building on a vacant parcel between Farwell Drive and Orchard Supply Hardware in the Mowry East Shopping Center. The proposal includes required vehicular and pedestrian access, perimeter and other buffer landscaping, drainage and water treatment facilities, and associated utility appurtenances. See the Design Analysis section for further discussion of the proposed design.

Project Analysis:

General Plan Conformance: The existing General Plan land use designation for the project site is Community Commercial. The proposed project is consistent with the existing General Plan land use designation for the project site because the General Plan allows for offices, with the focus being “to provide neighborhood and City-wide services.” The following General Plan Goal and Policy are applicable to the proposed project:

FUNDAMENTAL GOAL 8: A diversity of residential, recreational, cultural, employment and shopping opportunities

Analysis: The proposed medical office building would provide jobs in the course of offering medical care to the community.

Policy LU 2.21: New development [in the Mowry/Blacow Community Commercial Center (CCC)] shall be oriented toward integrating and connecting the designated CCC. Site development planning should establish connections between parcels and development projects. Building orientation, setbacks, parking locations and building design shall be evaluated for how each element encourages continuity.

Analysis: The proposed site development plans are consistent with existing development in that they provide a through sidewalk connection from Farwell Drive, proposed driveways connect well with existing driveways, and the

building site is consistent with original plans for the development.

Zoning Regulations: The precise plan for P-67-2 contemplates development of all seven parcels that comprise the shopping center. On the applicant's parcel, the plan anticipates an approximately 25,000-square-foot building and 34 associated parking spaces (See Informational Enclosure 7 for precise site plan). Allowed uses under the site's Community Commercial General Plan Designation include medical offices, subject to review and approval of a Planned District Minor Amendment.

The proposed two-story medical office building would be approximately 32,600 square feet within a 1.4-acre (60,984 square feet) parcel—resulting in a 0.535 Floor Area Ratio (FAR). In the Community Commercial (C-C) District, 0.50 is the maximum FAR normally allowed. The additional 0.035 FAR represents approximately 2,100 square feet of additional space. However, the usable interior square footage is approximately 29,000 square feet, and designing for medical services entails oversized equipment storage areas, wider access corridors and gurney-sized elevators due to Institutional ("I") building code occupancy requirements. The applicant has also proposed limited Monday through Saturday hours from 7 a.m. to 5 p.m. Per FMC 8-21104(i)(3), increases in FAR may be allowed based upon findings in FMC 8-22140.5. In addition, while the building square footage is approximately 7,600 square feet more than anticipated in the precise plan, the building would occupy a substantially smaller site footprint due to the second story.

Parking:

The proposed building is required to have 1 parking space for each 250 square feet of leasable space, under FMC section 8-22003(b)(4). Based on this ratio, 130 spaces ($32,600 \div 250$) are required to serve the project.

The applicant proposes to meet the requirement by constructing 72 new parking spaces on the subject parcel (38 more than called for in the precise plan) and utilizing 58 existing parking spaces in the Shopping Center common area. With the addition of several finger islands by landscape condition, the parking to be provided onsite may be reduced by a few spaces through building permit review, but must remain above the required minimum counting on- and off-site spaces. The applicant has proposed, and staff has conditioned, a commute alternative program to include carpool organization, bicycle encouragement, and free shuttle service to and from BART. In addition, the applicant has agreed to require employees to park in the rear of the building, leaving the front spaces available for visitors expected to park for shorter periods of time. Assuming individuals will park close by, the 58 off-site spaces represent approximately 1/3 of the 173 spaces in the central parking bays within 200 feet of the proposed development. See Table 1 for a City of Fremont parking requirement compliance analysis.

Table 1: Number of Parking Spaces Provided by Type

| <i>Parking Type</i> | <i># of Spaces</i> |
|---|--------------------|
| Off-site Common Area | 58 |
| New Standard and Accessible Spaces Onsite | 54 |
| New Compact Spaces Onsite [23% planned where 35% is allowed by FMC 8-22003(e)] | 16 |
| Two-9-Bicycle Capacity Lockup Rack [8-bike rack counts as one space per FMC 8-22010(a)] | 2 |
| Total Parking Provided ($32,600/250=130$ required) | 130 |

The Shopping Center has sufficient parking capacity to contribute the 58 spaces to the project. The precise site plan for P-67-2 establishes the parking and circulation plan for the whole Shopping Center and requires that all seven parcels share parking and circulation in common. Because parking is required to be shared throughout the entire Shopping Center, the available capacity for the applicant's project is calculated by pooling the parking spaces located on all of the Shopping Center parcels. There are currently 1,117.5 existing parking spaces (including credit for bicycle racks), only four of which are compact spaces. The Shopping Center currently has 251,929 square feet of rentable space according to County Assessor records, which requires 1008 parking spaces ($251,929 \div 250$). Accordingly, the Shopping Center has 109.5 ($1,117.5 - 1008$) more spaces than required and thus can contribute 58 spaces to the project.

Design Analysis:

Site Planning:

The applicant proposes to construct the building in line with the neighboring Orchard Supply Hardware building, providing a wrap-around driveway with a bordering sidewalk and planter area connecting to the existing on-site spine between Blacow Road and Farwell Drive. The drive aisle directly in front of the tower element features decorative paving for aesthetics and to slow down traffic near the entry.

Architecture:

The existing shopping center was predominantly built from the late 1960s through the mid-1980s, and contains a variety of construction types, including concrete tilt-up, CMU block (concrete masonry units), and wood-frame. Facade materials range from painted CMU block to brick veneer, with a variety of color palettes, ranging from earth tones to eclectic pastels. The base materials, screening methods, and roof systems also differ. Both one- and two-story buildings exist throughout the development, which occupies an entire city block. The applicant is proposing a medical office building on a vacant parcel in the southwestern corner of the site that, for visualization purposes, is about 40' wider and longer than the bank building on Mowry Avenue.

The proposed two-story office building is a relatively simple rectangular 99' by 167' design approximately 33' tall (where a 110' by 250' rectangular building was previously allowed by P-67-2) with a projecting tower element of approximately 37' centered on its northwest elevation. The bottom 2/3 of the tower element is wrapped with a durable and attractive stone material flanking either side of the two-story glass revealing the primary entry lobby. Symmetrically-simple paired sets of windows with 1/4-sized upper light panes sit one above the other on both floors all the way around the building. There are metal canopies suspended in front of the two-story height of glass above the double-glass doors at the primary entry and above six other single glass doors featuring sidelights and transom windows on various other elevations. The first-floor canopies help to create a human scale at the various building entrances. A system of vertical and horizontal reveals serves to break up the building façade, and an integrated cornice feature has been included as a cap around the parapet to provide a shadow line along the top edge of the building. An emergency generator enclosure in the corner of the southeast elevation appears to be integrated into the building design in that it is a full story in height and follows the architectural, material, and color pattern for the rest of the building. In addition, a 126-square-foot detached masonry refuse and recycling enclosure in a relatively hidden, but accessible, area near the northeast corner of the site is also provided.

Although “green building” measures above and beyond building code requirements are voluntary for private commercial projects in Fremont, environmentally-beneficial features proposed for the project include a cool roof, dual-glazed insulated glass windows where single glazing would be permitted by code, and plans for employee lockers and access to showers for use by bicycle commuters. By virtue of complying with local codes, the building collects various LEED points in such categories as landscape-based stormwater treatment, Title 24 energy requirements, light pollution reduction, water-efficient landscaping, recyclable storage and collection, and the building’s infill location near restaurants, residential neighborhoods, and services. The applicant is looking into the installation of more efficient indoor lighting fixtures as well to reduce their energy use. In addition, the applicant plans to install a rooftop photovoltaic system, to be screened behind the front parapet wall, providing approximately 20% of the building’s electricity usage.

Open Space/Landscaping:

Approximately 12,000 square feet of landscaping is proposed onsite in a system of parking lot perimeter planting areas, sidewalk borders, and treatment areas. The most usable of these areas is at the rear of the building, which features a sitting area with several tables and chairs and separates the building from a triangular depressed open turf area that doubles as a component of the water treatment measures. There are four such treatment areas on site (driven by the Hydro-modification Management Program) within the wide angles created by the edges of the driveways and parking bays.

The applicant has proposed a total of 31 additional trees onsite. Twin Chinese Pistache trees flank the primary building entry, while a series of London Plane trees surround the parking lot. The applicant proposes to plant Chinese Elms in the rear of the building nearest to the triangular eating area. There are also 8” to 12” Chinese Elms on the street frontage that the applicant proposes to retain and supplement with an additional specimen where the existing unfinished driveway apron adjacent to the Union Sanitary District’s (USD) easement is to be removed. The street tree and all six primary trees along the primary driveway would be 24” box, while the balance of trees onsite would be 15-gallon-sized.

A planter approximately 6 feet wide including fragrant Germander and Rosemary adjoins the building’s perimeter sidewalk. Rosemary is also the primary plant along the street perimeter. Due to the alignment of a sewer easement that prohibits trees along the southeast property line, the applicant has proposed 5-gallon Pineapple Guava to provide a suitable border along an existing retaining wall, which would be repaired and repainted within the scope of this project. The balance of the landscape plan calls for Grecian Laurels and Chanticleer Pear trees, with one-to-five gallon shrubs set in groundcover underneath the canopy, as is typical for this type of development. Subject to agreement by the adjacent property owner, the City has conditioned the applicant to include two additional parking lot fingers near the USD easement and to provide larger trees across the front driveway.

Circulation:

The proposed development is located on Farwell Drive, which is a collector street with existing street improvements along the project’s frontage. The existing driveway for the commercial center from Farwell Drive will serve as an access to the project. The developer is proposing to build a centrally-located medical office building with parking loaded from a new on-site wrap-around drive aisle that provides appropriate Fire Department access to the building and loops back to the existing commercial driveway. The developer is required to modify the street improvements by removing an existing unfinished driveway apron that would have served a rear loading dock for a use requiring one, but would

have been partially on the Hetch-Hetchy Easement (which is soon to be repaired) and would have unnecessarily conflicted with existing turning movements on Farwell Drive, and replacing it with curb, gutter, sidewalk and a planter strip in accordance with the Street Right-of-way and Improvement Ordinance.

Grading & Drainage:

The parcel is generally flat with a mild slope from the southwest corner to the northeast corner. The surface drains onto the abutting commercial paved drive aisle. There is an existing underground storm drain that traverses the parcel from the northeast corner to the southwest corner. This storm drain connects to the on-site private main within the commercial shopping center.

Grading for the project consists of creating a wrap-around central drive aisle around a central level pad for the proposed medical office building. The parking spaces are served from this central 26 foot wide drive aisle. The parking lot is sloped away from the building to the outbound curb and gutter along the perimeter of the parcel. The applicant's engineer estimates total project grading to be balanced with 615 cubic yards each of cut and fill. Runoff from pavement areas would be treated in landscape-based treatment measures before connecting to existing on-site storm drainage facilities. The on-site storm drainage system and connection to the shopping center drainage system will be included with the construction plans for the project. The storm drain system is subject to approval of the City Engineer and the Alameda County Flood Control and Water Conservation District.

Urban Runoff Clean Water Program:

The Alameda Countywide National Pollution Discharge Elimination System (NPDES) Municipal Stormwater Permit requires all new development to incorporate measures to prevent pollutants from being conveyed in stormwater runoff and into the public storm drain system. This project is required to comply with the NPDES permit by incorporating treatment measures into the project design.

The project intends to meet the quantitative stormwater treatment requirements by installing four (4) in-ground infiltration planters (4% of impervious area allocation) to treat 100% of the total impervious area. In order to conform to the quantitative performance criteria of the Countywide NPDES permit, the project may be required to incorporate additional treatment control BMPs to treat stormwater runoff. The stormwater treatment design shall be integrated into the storm drain design for the project and shall be subject to review and approval of the City Engineer prior to building permit issuance.

The project site is also required to implement flow-duration controls, which limit the rate that stormwater is discharged from the site. Flow duration controls are required because the project is located within the Hydro-modification (HM) susceptibility area and the project creates more than an acre of impervious area. The flow-duration controls will cause stormwater to be retained on site and slowly discharged into the public storm drain system, thereby preventing any increased creek erosion downstream of the project site. A stormwater treatment plan that details proposed flow duration controls/HM measures and supporting numeric sizing calculations must be provided to the City for approval prior to issuance of a building permit.

As required by the Alameda Countywide NPDES Municipal Stormwater Permit, the property owner shall enter into a maintenance agreement for the long-term operation and maintenance of stormwater treatment measures. The agreement would require the ongoing maintenance of all the designated

treatment/HM facilities, including periodic replacement of media filter cartridges in the stormwater treatment vaults if applicable. The property owner shall also plan for sidewalk and pavement sweeping to help prevent debris and other pollutants from entering storm drains.

Geologic Hazards:

The project site is within a Liquefaction Zone on the official State Geologist's Seismic Hazard Zone maps. In accordance with State law, a project geotechnical and seismic hazard report is required and is subject to City review and approval prior to building permit issuance.

Applicable Fees: This project is subject to Citywide Development Impact Fees. These fees currently include fees for fire protection, capital facilities and traffic impacts. All applicable fees shall be calculated and paid at the office rate.

Environmental Review: This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15332, Infill Development. Additionally, the applicant submitted a Phase I preliminary environmental site assessment, which identified no environmental concerns. The site has been used as a Christmas tree lot accessed via the adjacent driveway on Farwell Drive, and has not been developed since at least 1939, the earliest availability date of the area's aerial photos.

Planning Commission: The item was originally scheduled for Planning Commission review on March 12, 2009, but was continued to April 9, 2009 to allow the applicant additional time to work with Mowry East, L.P., the owner of the neighboring parcel within the Shopping Center that contains Orchard Supply Hardware as well as the nearby parking field that extends between Farwell and Blacow. During the intervening month, the City and both parties met to discuss a number of issues, including parking calculations and impacts, common area maintenance, synergy and conflict of uses, and signage.

Mowry East, through its representatives Mary Ann Crannell and attorney Jay Ross, attended the April 9, 2009 Planning Commission hearing and voiced concerns related to parking and the cost and responsibility for Shopping Center common area improvements, and generally opposed the project's approval without a private negotiated agreement between the two owners on these items (April 9, 2009 Planning Commission minutes attached as Informational Enclosure 3). Mowry East claimed that the REA governed parking availability in the Shopping Center and that it was legally inadequate for purposes of meeting the City's parking requirements. The Planning Commission found, based on Staff's advice, that the legal adequacy of the REA to satisfy the requirement of section 8-22006 was not relevant to their review of the project because the determination as to whether off-site parking requirements are met is to be made by Staff prior to the issuance of a building permit. The Planning Commission voted 6-1 in favor of the Project.

Appeal: Mowry East submitted a third-party appeal from the Commission's approval of the project on April 17, 2009 (enclosed as Informational Enclosure 4 and summarized for response below). On appeal, Mowry East continues to argue that the REA does not meet the City's off-site parking requirements, and asks that the applicant be required, as a condition of approval, to enter into a new agreement with Mowry East for parking on its parcel.

Staff recommends that the Council deny the appeal and the requested relief for several reasons. First, a private agreement between parcel owners within the Shopping Center to allocate parking among uses

would most likely violate its zoning requirement for integrated common area parking and circulation. Second, the applicant has satisfied the zoning code's parking requirements by proposing to build some parking spaces on-site and to use off-site common parking spaces in the Shopping Center, as contemplated by the precise plan (see discussion below). Because the Shopping Center has sufficient capacity to provide the spaces needed for the project (see "Parking" heading above), the applicant's proposal satisfies the parking requirements necessary to receive land use approval. Lastly, whatever disputes may remain between the applicant and the appellant, such as maintenance of the common area, are private matters to be worked out by the property owners and should not be considered by the City when determining whether to approve the project.

Staff notes that there has been some confusion concerning the significance of the REA in the planning review process. This confusion arose because staff was initially unable to locate the complete precise plan for the P-67-2 1978 amendment in the City's archives and anticipated that the applicant would ultimately rely on the REA and attached site plan (submitted by applicant) to satisfy the requirement of FMC section 8-22006 to provide a legal agreement guaranteeing off-site parking (see discussion below). Accordingly, staff initially sought assurance from the applicant that the REA had not been altered since 1978 and sought to require that the easements not be altered as a condition of the project.

Subsequently, after many hours of research staff was able to locate the complete precise plan. Because the precise plan requires integrated parking and circulation throughout the whole Shopping Center, reliance on the site plan attached to the REA was both no longer necessary and to be avoided so as not to create the perception that it was the controlling document for purposes of zoning approvals within the Shopping Center. As discussed below, the precise plan fulfills the requirement of Section 8-22006, and in any event, compliance with Section 8-22006 is determined by staff after the project is approved and before issuance of the building permit.

Off-site parking

The zoning ordinance gives the proponent of a use requiring parking on-going flexibility in determining the manner in which the required number of parking spaces will be provided. The proponent may provide all or part of the parking spaces on-site, or off-site subject to certain restrictions. For instance, when a use requiring parking is in one ownership and all or part of the required parking provided is in another ownership, as the applicant proposes here, FMC section 8-22006 requires that the property owners involved submit a legal agreement guaranteeing that the required parking spaces will be maintained so long as the use requiring parking is in existence or unless the required parking is provided elsewhere in accordance with the zoning ordinance. For new developments or uses, the legal agreement need not be submitted at the time a project receives land use approval, but must be approved before a building permit is issued.

In this instance, the precise plan for P-67-2 fulfills the intent of Section 8-22006. Specifically, the precise plan for P-67-2 establishes that parking throughout the Shopping Center be used in common by all parcel owners and uses, and functionally guarantees the availability of the common area parking for the life of the Shopping Center as the integrated parking and circulation component of the precise plan can only be altered by a major Planned District Amendment in accordance with the zoning code. Moreover, the adequacy of the REA to guarantee the availability of off-site parking spaces, if necessary, would be reviewed by the City Attorney and not the planning agency under FMC Section 8-22006. It is therefore not a consideration of the planning agency when reviewing the project for zoning

conformance. For this reason, the adequacy of the REA is not a proper subject of this appeal and should not be taken into consideration by the Council.

Public Notice and Comment: Public hearing notification is applicable. Notices to 100 owners and occupants of property within P-67-2, PUD-72-5, and otherwise within 300 feet of the site were mailed, and a Public Hearing Notice for the March 12, 2009 Planning Commission meeting was published by The Tri-City Voice on February 25, 2009.

Conclusion: Staff understands that there are concerns between the property owners that have to do with private documents created in part to comply with previous zoning requirements. The decision before the council is whether the Planning Commission acted properly within their discretion to approve the design of a new building within a single parcel of a Planned District within which the precise site plan allows such a building on the subject parcel. Staff recommends that the City Council uphold the Planning Commission's approval of the project and deny the appeal, allowing the applicant to move forward with compliance with conditions of approval and entitling the proposed building.

ENCLOSURES:

[Exhibit "A" Site Plan, Floor Plans, Conceptual Roof and Roof Equipment Plan, Architectural Elevations, Landscape Plans, and Conceptual Grading and Drainage Plans](#)
[Exhibit "B" Findings and Conditions of Approval](#)

Informational Items:

- [1. Applicant's Statement of Justification for Floor Area Ratio Increase](#)
- [2. 1978 Reciprocal Easement and Development Agreement](#)
- [3. April 9, 2009 Planning Commission Minutes](#)
- [4. April 17, 2009 Appeal Letter from Mary Ann Crannell](#)
- [5. Project Summary Information Sheet and Maps](#)
- [6. Text of Ordinance # 1237](#)
- [7. Planned District P-67-2 1978 Precise Site Plan Amendment and Exhibit](#)

RECOMMENDATIONS:

1. Hold public hearing.
2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) under 15332 of the CEQA Guidelines, infill exemption.
3. Find that construction of a 32,600 square-foot medical office building and associated site development as shown on Exhibit "A" for PLN2009-00123 is in conformance with relevant provisions contained in the General Plan. These provisions include the designations, goals, and policies set forth in the General Plan's Land Use Chapter as enumerated in the staff report.
4. Deny the third-party appeal (uphold Planning Commission's April 9, 2009 approval) of the Rescission of Planned Unit Development PUD-72-5.
5. Deny the third-party appeal (uphold Planning Commission's April 9, 2009 approval) of the Planned District Minor Amendment, Finding for Floor Area Ratio Increase, and Site Plan and Architecture PLN2009-00123, as shown on Exhibit "A", subject to findings and conditions in Exhibit "B".

8.1 Report Out from Closed Session of Any Final Action

10.1 Council Referrals – None.

10.2 Oral Reports on Meetings and Events

ACRONYMS

| | | | |
|----------------|--|--------------|---|
| ABAG..... | Association of Bay Area Governments | FUSD | Fremont Unified School District |
| ACCMA | Alameda County Congestion Management Agency | GIS | Geographic Information System |
| ACE..... | Altamont Commuter Express | GPA..... | General Plan Amendment |
| ACFCD..... | Alameda County Flood Control District | HARB | Historical Architectural Review Board |
| ACTA | Alameda County Transportation Authority | HBA | Home Builders Association |
| ACTIA..... | Alameda County Transportation Improvement Authority | HRC | Human Relations Commission |
| ACWD..... | Alameda County Water District | ICMA | International City/County Management Association |
| BAAQMD | Bay Area Air Quality Management District | JPA | Joint Powers Authority |
| BART | Bay Area Rapid Transit District | LLMD | Lighting and Landscaping Maintenance District |
| BCDC | Bay Conservation & Development Commission | LOCC..... | League of California Cities |
| BMPs | Best Management Practices | LOS | Level of Service |
| BMR | Below Market Rate | MOU | Memorandum of Understanding |
| CALPERS..... | California Public Employees' Retirement System | MTC..... | Metropolitan Transportation Commission |
| CBD..... | Central Business District | NEPA | National Environmental Policy Act |
| CDD..... | Community Development Department | NLC..... | National League of Cities |
| CC & R's | Covenants, Conditions & Restrictions | NPDES..... | National Pollutant Discharge Elimination System |
| CDBG..... | Community Development Block Grant | NPO..... | Neighborhood Preservation Ordinance |
| CEQA | California Environmental Quality Act | PC..... | Planning Commission |
| CERT..... | Community Emergency Response Team | PD | Planned District |
| CIP | Capital Improvement Program | PUC..... | Public Utilities Commission |
| CMA | Congestion Management Agency | PVAW..... | Private Vehicle Accessway |
| CNG..... | Compressed Natural Gas | PWC..... | Public Works Contract |
| COF | City of Fremont | RDA | Redevelopment Agency |
| COPPS..... | Community Oriented Policing and Public Safety | RFP | Request for Proposals |
| CSAC..... | California State Association of Counties | RFQ..... | Request for Qualifications |
| CTC | California Transportation Commission | RHNA | Regional Housing Needs Allocation |
| dB | Decibel | ROP..... | Regional Occupational Program |
| DEIR..... | Draft Environmental Impact Report | RRIDRO | Residential Rent Increase Dispute Resolution Ordinance |
| DO | Development Organization | RWQCB | Regional Water Quality Control Board |
| DU/AC..... | Dwelling Units per Acre | SACNET | Southern Alameda County Narcotics Enforcement Task Force |
| EBRPD | East Bay Regional Park District | SPAA | Site Plan and Architectural Approval |
| EDAC | Economic Development Advisory Commission (City) | STIP | State Transportation Improvement Program |
| EIR..... | Environmental Impact Report (CEQA) | TCRDF..... | Tri-Cities Recycling and Disposal Facility |
| EIS | Environmental Impact Statement (NEPA) | T&O | Transportation and Operations Department |
| ERAF..... | Education Revenue Augmentation Fund | TOD | Transit Oriented Development |
| EVAW | Emergency Vehicle Accessway | TS/MRF | Transfer Station/Materials Recovery Facility |
| FAR | Floor Area Ratio | UBC | Uniform Building Code |
| FEMA..... | Federal Emergency Management Agency | USD..... | Union Sanitary District |
| FFD..... | Fremont Fire Department | VTa | Santa Clara Valley Transportation Authority |
| FMC..... | Fremont Municipal Code | WMA | Waste Management Authority |
| FPD..... | Fremont Police Department | ZTA..... | Zoning Text Amendment |
| FRC..... | Family Resource Center | | |

**UPCOMING MEETING AND CHANNEL 27
BROADCAST SCHEDULE**

| <i>Date</i> | <i>Time</i> | <i>Meeting Type</i> | <i>Location</i> | <i>Cable Channel 27</i> |
|--|--------------------|---------------------------------|------------------------|------------------------------------|
| June 9, 2009 | 7:00 p.m. | City Council Meeting | Council Chambers | Live |
| June 16, 2009 | TBD | Work Session | Council Chambers | Live |
| June 23, 2009 | 7:00 p.m. | City Council Meeting | Council Chambers | Live |
| June 30, 2009 (5 th Tuesday) | | No Meeting | | |
| July 7, 2009 | 7:00 p.m. | City Council Meeting | Council Chambers | Live |
| July 14, 2009 | 7:00 p.m. | City Council Meeting | Council Chambers | Live |
| July 21, 2009 | TBD | Work Session | Council Chambers | Live |
| July 28, 2009 | 7:00 p.m. | City Council Meeting | Council Chambers | Live |
| August | | Council Recess | | |
| September 1, 2009 | 7:00 p.m. | City Council Meeting | Council Chambers | Live |
| September 8, 2009 | 7:00 p.m. | City Council Meeting | Council Chambers | Live |
| September 15, 2009 | TBD | Work Session | Council Chambers | Live |
| September 22, 2009 | 7:00 p.m. | City Council Meeting | Council Chambers | Live |
| October 5, 2009 (Monday) | 4:00 p.m. | Joint City Council/FUSD Mtg. | Council Chambers | Live |
| October 6, 2009 | 7:00 p.m. | City Council Meeting | Council Chambers | Live |
| October 13, 2009 | 7:00 p.m. | City Council Meeting | Council Chambers | Live |
| October 20, 2009 | TBD | Work Session | Council Chambers | Live |
| October 27, 2009 | 7:00 p.m. | City Council Meeting | Council Chambers | Live |